



Gambling with humanity at sea: states' legislative and policy responses to irregular migration in the Indian Ocean

Mohammad Rubaiyat Rahman

To cite this article: Mohammad Rubaiyat Rahman (2021) Gambling with humanity at sea: states' legislative and policy responses to irregular migration in the Indian Ocean, *Journal of the Indian Ocean Region*, 17:3, 306-322, DOI: [10.1080/19480881.2021.2001984](https://doi.org/10.1080/19480881.2021.2001984)

To link to this article: <https://doi.org/10.1080/19480881.2021.2001984>



Published online: 01 Dec 2021.



Submit your article to this journal [↗](#)



Article views: 233



View related articles [↗](#)



View Crossmark data [↗](#)



Gambling with humanity at sea: states' legislative and policy responses to irregular migration in the Indian Ocean

Mohammad Rubaiyat Rahman

Department of Political Science, University of Texas System, Longview, TX, USA

ABSTRACT

It cannot be overstated that in recent times the gravity and complexity of irregular maritime migration have triggered concerns and debates in the academic domains of International Relations and International Law. The article examines how states' compliance with, and enforcement of, international law and legal norms would tackle the challenges of irregular migration in the Indian Ocean region. The legislative and policy challenges regarding irregular migration can be analyzed under two segments. First, there is a lack of comprehensive discussion about the sending and the receiving states' commitments (regarding irregular migrants) to international law and legal norms. Secondly, deficit of comparative analysis to show how the littoral states comply with international law norms on migration and refugee influx. Such analysis from multiple perspectives would be helpful to get insights and make policy recommendations about how effectively international law norms could be enforced through national legislation and policy framework.

KEYWORDS

Rohingya; Indian Ocean;
irregular maritime migration;
Bay of Bengal

Introduction

In contemporary literature on International Relations and International Law, irregular migration is a topic that occupies a pivotal space (Mitchell, 1989; Guild, 2004). During the twentieth century, studies on migration mainly focused on economic aspects (Karakoulaki, Southgate, & Steiner, 2018). In the pertinent literature on irregular migration, we also find a discussion regarding the challenge of tackling and preventing the trend (Guild, 2004). It is often overlooked that human rights protection and rescue of stranded migrants at sea can be better understood through states' conformity to international law and national policy responses toward irregular migrants.

Nevertheless, important gaps exist in the existing literature on irregular maritime migration. As Massari (2015) points out, little scientific analysis has been carried out so far from the perspectives of irregular migrants. In fact, there has been little systematic research on how irregular maritime migration issues are addressed and managed through the framework of international legal norms. Klug and Howe (2010) remark that the existing literature on irregular migration by sea lacks a detailed analysis of how to

tackle the crisis effectively. What is also needed is a detailed discussion on how the failure to incorporate international law norms may limit the effective regulation of irregular migration by sea. Furthermore, there is an inadequate understanding of the national legal policies and responses that impact the crisis of irregular maritime migration in the Indian Ocean region.

Irregular maritime migration in the Indian Ocean region is a problem that has existed for decades. Common people of the Indian Ocean region have viewed the ocean migration movement as one of the livelihood strategies (Rashid & Ali Ashraf, 2016). As an irregular migration route, the Indian Ocean is more critical than any other ocean space (Amrith, 2013). After the 1970s, maritime migration in the Indian Ocean is veered into a familiar phenomenon (Ghrainne, 2017). As noted by Amrith (2013), since the 1970s, there has been unabated flow of irregular maritime migration across the Indian Ocean region.

The year 2015 saw the emergence of the Indian Ocean region as a hotspot for irregular migration (Newland, 2016). In that year, irregular migrants, mostly from Bangladesh and Myanmar, attempted to cross the Bay of Bengal to reach the coasts of Southeast Asian countries (Newland, 2016). Snapshots of maritime migration in the Indian Ocean region depict the crossing of ocean waters by small boats and rickety vessels. During their sea voyages, these migrants frequently experience gross violations of human rights encompassing extortion, physical torture, and sexual exploitation. Those who venture dangerous sea voyage across the Indian Ocean, belong to motley of categories, and other than asylum-seeking displaced people, there are economic migrants joining the exodus of migration (Allchin & Peel, 2015).

The affected states of the Indian Ocean region have exhibited a tendency to put the irregular migration crisis out of focus. Some states do not have any legal framework, institutional capability, and human resources to assist migrants and asylum seekers. Some other states seem to adopt harsh policy measures to tackle the crisis. Receiving and sending states' indifferent attitudes about irregular migrants may cause a direct or indirect revival of abject situations where migrants would face serious risks, including the persecution of life. To check the influx of irregular migrants, the destination countries might choose to adopt highly regulated border management systems (McAuliffe & Mence, 2017). The present migration crisis of the Rohingya refugees is another manifestation of this phenomenon. These irregular migrant victims leave Myanmar through Bangladesh via the sea routes of the Bay of Bengal toward the coastal locations of Thailand, Malaysia, and Indonesia (Ghrainne, 2017). Among the influx of these victims, there are other types of migrant people who are leaving their respective countries not due to fear of persecution but rather for economic or environment-induced reasons (Ghrainne, 2017).

The grim tragedy, as revealed by the ongoing Rohingya displacement crisis and irregular maritime migration events in the Indian Ocean is that the common response adopted by the affected states, (i.e. sending, receiving and transit states) has been largely confined to measures such as increased border surveillance and interception operations, rather than to mull over any humane obligation toward crisis affected people (Lewa, 2008; Parnini, 2013; Song & Cook, 2015). Migrant receiving countries have shown a tendency to impose restrictive legal and policy framework, which reflects their concern that influx of illegal migrants might put the national identities of receiving countries in jeopardy (McAuliffe & Koser, 2017). Nikolas Tan (2016) observes that the principle of non-

refoulement remains an exception by state practice of those countries. It happens rather frequently that receiving countries (Thailand, Malaysia, and Indonesia) turn around or push out the migrant carrying vessels to the sea (Tan, 2016). Even when receiving states provide shelter, the states' inexperience and unfamiliarity of practice of international standards of care to irregular migrants and asylum seekers get revealed through mismanagement in migrants' shelter and lack of access to proper health care (Missbach, 2016). The situation shows lack of enforcement of international law. Gleeson (2017) opines that lack of commitment to genuine responsibility sharing had become evident among these countries.

In the international arena, legal obligations provide the stepping-stones for endorsing norms of international law and holding wrongdoing state accountable. However, migrant affecting countries of the Indian Ocean region are well known for indifference toward adopting binding legal obligations (Gleeson, 2017). Owing to fragile legislative and policy framework, the irregular maritime migration incidents may also go unnoticed by relevant law enforcement agencies. Once seen through the lens of the irregular maritime migration crisis, it is visible that blue waters of the Indian Ocean pose a variety of perils to both states and irregular migrants. The phenomenon demonstrates limitations of migration governance in the Indian Ocean region (Rashid & Ali Ashraf, 2016).

This article is neither venturing to investigate whether the irregular maritime migrants are victims of persecution or violence nor to ask whether they are entitled to receive refugee status. Rather, the article aims at mapping out the applicability of international law norms to the affected irregular maritime migrants stranded in the Indian Ocean.

The article understands that compliance with international law is subject of contemporary relevance regarding irregular maritime migration. Furthermore, enforcing international law norms through national legal and policy frameworks also reflects a state's intention to honor its commitment to international law. From such perspectives, the article endeavors to map out and assess how the states' compliance with and enforcement of international law norms would help tackle the challenge of irregular migration in the Indian Ocean.

The basic premise in this article is that the crisis of irregular maritime migration in the Indian Ocean can be handled effectively, provided national legal and policy frameworks incorporate the norms and principles of international law. The articles' objectives are two-fold: to address the scourge of irregular maritime migrants in the Indian Ocean region and to unveil that the pitfalls in national legislative and policy responses are responsible for this crisis. It also brings into discussion the obstacles that cause the failure of national legislation to enforce the treaty provisions and principles of international law to tackle irregular migration by sea.

Irregular maritime migration: motivation, definition, and securitization

In the contemporary world, cross-border movement has been increasing (McAuliffe & Mence, 2017; Browning, 2017). As noted by McAuliffe and Mence (2017), against the backdrop of climate and environment-induced displacement and regional tension among communities, irregular migration has been posing as an enduring challenge. Before delving into key focus areas of the article, it is relevant to briefly introduce the concept

of 'irregular migration' and reflect on contemporary irregular migration scenario in the Indian Ocean region.

There has been a debate about using the terms 'irregular migration' and 'illegal migrant.' Scholars are critical about the usage of these two terms in academic literature (Ustubici, 2018). The reason is that the term 'illegal' produces an overwhelmingly negative nature of the category that portrays unauthorized migrants as 'criminal' and 'illegal' subjects (Ustubici, 2018). International law does not mark irregular migration as illegal migration (Khurana, 2017). However, there is a gap in international law on how to handle the irregular maritime migration when the search and rescue situation arises in any maritime zone (Khurana, 2017).

It would be wrong to assume that irregular migrants who are crossing the sea routes to reach developed countries are mostly impoverished population (Collett, 2016). Many irregular migrants are also well educated and well-resourced to work in transit and destination states (Collett, 2016). Irregular migration refers to the presence of people without authorization by the sovereign state (Ustubici, 2018). According to Ustubici (2018), irregular migration concept is more complex than simply crossing border of a foreign sovereign state, and in some cases, an irregular migrant can also be a potential asylum seeker whose asylum-seeking application has been rejected.

According to McAuliffe and Koser (2017), irregular migrants are those individuals who intend to purposefully trespass the border of a sovereign state without authorization. In their view, as per this definition, individuals can be considered as irregular migrants in three situations. First, when they cross border unknowingly and without proper authorization. Second, those who become irregular after expiration of their valid staying period in the foreign countries. Finally, those who have been smuggled into countries in illegal ways.

Factors related to the composition and motivation of irregular maritime migrants are as diversified as the sea routes that irregular migrants take to reach their respective countries of destination (Collett, 2016; Betts, 2010). Therefore, irregular maritime migrants are often a mixed populace belonging to different sections of society (Gauci & Mallia, 2017; Collett, 2016), comprising prospective asylum seekers, refugees, economic migrants, trafficked persons, and climate-induced displaced people (Gauci & Mallia, 2017). In addition to that, geography and locations are also important aspects of irregular maritime migration flow (McAuliffe & Mence, 2017). Salient aspects that are associated with irregular maritime migration include geography; mode of transport, non states actors, migrant smuggling networks, state sovereignty and international obligations, and migrants' motivations (McAuliffe & Mence, 2017).

In literature pertaining to international law, security issues relating to irregular maritime migration are significantly dealt from the perception of destination state (D'Orsi, Carciotto, & Johnson, 2017; Moreno-Lax & Papastavridis, 2017); mostly not from the perspective of the place, country or region from where the irregular migrant people are displaced (Klein, 2017). In contemporary times, irregular maritime migration has veered into a security matter due to its preconceived nexus between human smugglers and organized criminal groups (D'Orsi et al., 2017). Article 6 of the Transnational Crime Convention considers the smuggling of migrants at sea as an illicit activity (D'Orsi et al., 2017). Klein (2017) suggests that the security concern about migrant smuggling extends both to migrants and to those who facilitate transport for irregular migrants.

From that point of view, irregular maritime migrants making journey by sea would also be perceived as a threat due to lack of identification, possible health issues, and other social implications for sovereignty (Klein, 2017).

Most of the migrant-receiving countries have adopted the strategy of extra-territorialization measures to take immigration control action beyond respective states' jurisdiction, which include visa requirement, predeparture checking, and interception at sea (Betts, 2010).

The flow of irregular maritime migrants, from the perspective of extra-territorialization, is also seen as threat to sovereignty and maritime security (D'Orsi et al., 2017). Most often, irregular migration activities are viewed by law enforcement agencies as criminal acts. Therefore, any humanitarian acts toward those displaced people are hindered very frequently. There is dire need, therefore, to exempt humanitarian acts towards irregular migrants from the clutches of criminal sanctions and security concerns.

Ferreira (2018) observes that the adoption of security measures against irregular maritime migration flows so far has not been helpful to solve the crisis; rather, those adopted measures disperse the crisis to other regions. Ferreira suggests that there is a compelling case in support of moving beyond the securitization approach and adopting a coherent strategy regarding migration management. Such a strategy would ensure security and stability at the border.

Irregular maritime migration and international legal framework

States have the unquestionable legal power to safeguard respective maritime sovereign zones. However, it does not exempt states from either disregarding or overriding customary international law relating to human rights and humanitarian obligations (Mallia, 2010; Tyagi, 1993).

Betts (2010) argues that states have certain obligations towards irregular maritime migrants who reach the respective state's territory or are under their jurisdiction. Irregular migrants are entitled to human rights protection under the international law framework relating to human rights and migrants (Betts, 2010). Human rights exist in the sea (Oxman, 1998), and concerns of basic human rights norms have indefeasible nexus with the application of the law of the sea (Treves, 2010). Hence, a discussion regarding the extent of the application of human rights to the migrants stranded at sea is extremely significant (Tanaka, 2012; Oxman, 1998). Although the maritime law is not itself any human rights instrument, the provision of the UNCLOS 1982 (i.e. Article 98) delineates the starting point of littoral states' responsibility to safeguard stranded human lives at sea, regardless of their status of nationality (Wilson, 2016; Treves, 2010).

A salient feature of international migration law is that the concerned basket of issues is not a self-contained legal regime (Sitaropoulos, 2015; Weiner, 1985; Barnes, 2010). Klein (2017) argues that irregular maritime migration is multi-dimensional and involves the smuggling of individuals and human trafficking. From that point of view, the law relating to irregular migration by sea is vast in scope and quite complex in nature.

There is a human rights nexus with irregular migrants that take journey by sea (Klein, 2017). Here, human rights involved include right to life; prohibition of torture and safeguard from inhumane treatment (Komp, 2017). There is also a serious concern about

special need for protection; healthcare and treatment; and safeguarding human dignity (Klein, 2017).

Nevertheless, loopholes exist in international law relating to refugee and migration issues (Clark, 2018). Issues of irregular migration are dealt indirectly in maritime-related international legal mechanism, and consequently, it makes the application of international law more critical (Barnes, 2010). International legal regime does not have any criteria to distinguish between asylum seekers, refugees, and economic migrants. Such ambiguities might place a large number of irregular migrants beyond the protection umbrella of international law (Mallia, 2010). These pitfalls of international law have been used by some of the migrant-receiving countries (Clark, 2018). Sometimes, narrow interpretation and application of international law instrument could also help the migrant-receiving states evade their obligations toward irregular migration and asylum seekers (Clark, 2018).

The provisions of the Law of the Sea and other branches of international law do not facilitate any right to irregular migrants to enter into a particular state's maritime zones without prior authorization. However, Mallia (2010) mentions two considerations that may enable irregular migrants and asylum seekers to enter without prior authorization. One consideration is the existence of asylum seekers (fleeing due to persecution) among irregular migrants on vessel. Another consideration is if the vessel falls into distress at sea. Otherwise, the receiving state may initiate interception measures.

According to Coppens (2017), one of the main obligations of interception measure (against irregular maritime migrant) is to prevent the onward travel of the migrants and to assert control over the migrant carrying vessels, which may not have any flag or nationality. It is mainly a unilateral state exercise, and it can also be adopted outside the periphery of the national border (Mallia, 2010). The 18th Meeting of the Standing Committee of the UNHCR titled, '*Interception of Asylum Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach*' (UN Doc EC/50/5c/ CPR. 17) (2 June 2000, Paragraph 14), defines 'interception' as measures encompassing all initiatives applied by state in national territory to prevent, interrupt, or stop the movement of persons without authorized documentation crossing the international border by land, air, or sea (Borelli & Stanford, 2014). Regarding 'interception,' Gammeltoft-Hansen (2012) suggests that the definition provided by UNHCR includes a wide number of instances.

The interception measures at sea as a law enforcement tool have raised concerns over the fate of rescued maritime migrants (Coppens, 2017). Such concerns also involve the protection of their human rights. Interception measures, exercised by the littoral states of the Indian ocean region, are symptomatic of a highly securitized approach. International law instruments do not provide any explicit human rights protection requirement during the modalities of interception in maritime zones (Coppens, 2017). Most of the interception and pushback practices are taking place in the extra-territorial operations (Borelli & Stanford, 2014). Hence, the brewing question: Will the human rights obligations of the intercepting state apply to such extraterritorial measures? (Borelli & Stanford, 2014).

Irregular maritime migration has put interception, search, and rescue regime under high pressure (Filippo, 2013). It is pertinent to mention here that 'rescue at sea' is different and distinct from interception measures at sea (Mallia, 2010; Andersson,

2012). The duty to rescue migrants in distress at sea is customary international law and Article 98 of the UNCLOS III mandates all states to render assistance to individuals in distress at the high seas (Tervo, Hossain, & Stepien, 2009). In the IMO's 'Guidelines on Treatments of Persons Rescue at Sea,' provision of principle 6.17 (doc. Msc 167) (20 May 2005) refers to a detailed procedure about how to bring individuals under distress at sea to 'place of safety' (Filippo, 2013). Here, the phrase 'place of safety' is defined as a location where rescue operation is deemed to be completed and where rescued person's life is not threatened and his/her basic human rights (e.g. food, shelter, medical needs) can be met (Filippo, 2013). However, such obligations have not been met when irregular maritime migrants are left intentionally in distress at high seas (Tervo et al., 2009).

The principle of *non-refoulement* is considered as a norm of customary international law (Klug & Howe, 2010) and was first mentioned in Article 33 of the 1951 Refugee Convention to prohibit expulsion or return of individuals, in whatsoever manner, to the frontiers of territory where one's life or freedom would be threatened (Klug & Howe, 2010). 'Non-refoulement' belongs to a French word *refouler*. In French lexicon, it means 'to drive back' (Bhuiyan, 2013). Principle of non-refoulement prohibits the return of a person, in any manner, to a territory where the person faces substantial risks of persecution, torture, and other serious harm (Goodwin-Gill, 2017; Giuffre, 2017).

The status 'customary international law' explains that irrespective of state being party to a treaty, the state is bound to conform to it (Tan, 2016). Therefore, the principle is applicable to both member states and non-member states of 1951 Refugee Convention (Szabewska & Karim, 2013). However, what's ambiguous is that the Refugee Convention does not elaborate the extraterritorial application of the principle. Mallia (2010) suggests that the obligation of non-refoulement principle outsets whenever the state resumes interception measure.

On a related note, the provision of Article 7 of the 1966 International Covenant on Civil and Political Rights also mentions about prohibition of refoulement (Bhuiyan, 2013; Klug & Howe, 2010). Bhuiyan (2013) opines that the article's provision indirectly provides implicit prohibition of refoulement. Significance of observance of non-refoulement principle has also been reiterated in 1967 UN Declaration on Territorial Asylum (article 3) and in the 1968 Tehran Conference on Human Rights (Bhuiyan, 2013; Piotrowicz, 2004).

Appalling phenomenon of irregular maritime migration in the Indian Ocean

In preceding centuries, the sea routes of the Indian Ocean were familiar for spice trading (Amrith, 2013). In contemporary times, the same ocean space has now been at the epicenter of irregular maritime migration events (Hong, 2012). In the Indian Ocean, the countries responsible as origin state for irregular migration are Bangladesh, Cambodia, Myanmar, Nepal, and Sri Lanka (Newland, 2016). However, Malaysia, Indonesia, Thailand, and India are both migrant origin and destination countries. For irregular migrants, the preferred states of destination are Singapore, Malaysia, Indonesia, and to the further south of India Ocean, Australia.

As noted by Newland (2016), from 2015, the Indian Ocean littoral states such as Bangladesh, Myanmar, and Thailand have become the epicenter of intense irregular

migration activities, with Thailand being used as a transit stoppage point. Irregular migrants from Bangladesh and Myanmar first cross the Bay of Bengal and then sail through the Andaman Sea to reach the Southeast Asian countries. Thereafter, they make efforts to cross the Straits of Malacca to travel further south to reach Australia.

Southeast Asian countries and Australia are attractive destinations for voyages of migrant smuggling people in the Indian Ocean (Lewa, 2008). McInerney (2000) notes that a significant number of irregular maritime migrant reaching the shores of Australia resume voyage from Indonesia. Such vessels are crewed by people who have nationalities of South Asian states (McInerney, 2000). Most of the maritime migrant people transit to Southeast Asia en-route to the Bay of Bengal and the Andaman Sea. Arrival at the coasts of Southeast Asian countries (i.e. Malacca Straits) is usually regarded as foothold into Australia.

Most incidents of migrant smuggling occur via unregistered boats. Crossing the blue water of the Indian Ocean threatens the lives of many irregular migrants as they often use unseaworthy, overcrowded and rickety boats (Tervo et al., 2009). As a consequence, accidents occur and tragedy strikes irregular maritime migrants. Most of these vessels begin their journey from the coasts of Bangladesh and Myanmar (Rahman, 2015). Sometimes, irregular maritime migrants use dinghies to cross the coastal waters for quick embarkment and dis-embarkment (Filippo, 2013). These small boats are not suitable for long ocean voyages that irregular maritime migration undertake to cross the ocean (Filippo, 2013; Lewa, 2008).

It would be wrong to consider migrant smuggling as victimless crime (Schloenhardt, 2002). In the blue water of ocean, maritime migrants are surrounded with various perils: unruly ocean currents and weather; unseaworthy vessels and sea sickness (Mallia, 2010). Irregular maritime migration crisis reveals that transnational criminals and their clandestine activities can flourish at sea (Noonan & Williams, 2016). The transnational criminal groups mainly facilitate the irregular migrants to make entry and stay in the transit points (Triandafyllidou & Maroukis, 2012). From 2015 onward, displaced due to violent situation in the Rakhine state of Myanmar, Rohingya people have turned Bangladesh into a transit and receiving state. This situation has also created more business for transnational smuggling networks (Massari, 2015).

Transnational criminal acts at sea and irregular maritime migration fall within the category of non-traditional security (Hong, 2012). In international law, smuggling as well as trafficking of human beings are deemed as criminal offences (Gauci & Mallia, 2017; Koser, 2011). Migrant smuggling causes major disruption to national immigration policy (Mallia, 2010), and littoral states of this region often fail to check maritime human trafficking. The UN Convention of Transnational Organized Crime lists 'migrant smuggling' under the rubric of organized criminal activities (Mallia, 2010). Irregular maritime migration crisis reveals that transnational criminals can have flourishing smuggling business at sea. Ocean provides them an isolated space to conduct their criminal activities in clandestine ways (Noonan & Williams, 2016). Transnational criminal groups, associated with irregular maritime migration, are active across the borders of several Southeast Asian countries (Noonan & Williams, 2016; Aronowitz, 2012). The loopholes in legislative and policy instruments have been providing the transnational criminal groups ample scope to hide their functions and organization structure (Noonan & Williams, 2016). Furthermore, smugglers associated with irregular migration by sea display extremely adaptable behavior, such as

change in smuggling routes and departure points, in response to the measures taken by the local law enforcement agencies (McInerny, 2000).

As noted by Triandafyllidou and Maroukis (2012), the transnational criminal groups associated with irregular migrant smuggling consist of several criminal groups from different states of the Southeast Asia region. Also involved are the local smuggling networks which used to work in designated transit points. These local networks control the business of smuggling through brokers and recruiters assigned with the task of finding potential clients for irregular migration by sea. The scholars further observe that criminal groups associated with smuggling mushroom in regions marked by displacement or conflict and violence. The agents and brokers of smuggling groups remain on the lookout for refugee camps and local communities for individuals who can be tempted to venture the sea voyage (Allchin & Peel, 2015; Massari, 2015). Criminal groups reduce activity in areas where law enforcement agencies' surveillances and observations are beefed up (Triandafyllidou & Maroukis, 2012).

However, in many cases, irregular migrants make payments after arriving at the place of destination. For such payment arrangement, there is requirement for guarantor for such service in the place of origin or in the place where their migrant outsets the journey (Triandafyllidou & Maroukis, 2012).

In most cases, it is almost impossible for irregular migrants to know whether their respective smugglers and traffickers are exploiting them or not (Triandafyllidou & Maroukis, 2012). Smugglers cram those people into unseaworthy, rickety vessels to cross the ocean (Holmes, 2015). On many occasions, smugglers abandon those vessels in the middle of the sea route, exposing irregular migrants to life-threatening conditions (Holmes, 2015). During smuggling by sea, irregular migrants are completely under the dictates of human traffickers and migrant smugglers (Schloenhardt, 2002). Furthermore, smugglers associated with irregular migration display extremely adaptable behavior in response to the measures taken by the law enforcement agencies (McInerny, 2000). In response to any measure of law enforcement agencies, as noted earlier, these transnational crime syndicates change the smuggling routes and departure points (McInerny, 2000).

Responses of Indian Ocean littoral states to irregular maritime migration: contexts and responses

Following the Rohingya crisis of 2015, and an upward trend in irregular maritime migration in the Indian Ocean, the common response of the concerned states has been to increase the border surveillance and interception measures. In the same year, when irregular maritime migration crisis erupted in the Bay of Bengal, the Southeast Asian states initially refused to give permit to those boats to land or disembark on the shores (Larking, 2017). These countries have been exercising such a policy of refoulement for years (Graham-Harrison, 2015). It is evident that such acts of turning back migrant people and consequently creating a stranded situation at sea- are infringing human rights obligations enumerated in the international bill of human rights (Ghrainne, 2017).

Bangladesh

In present times, irregular migrants stranded in the Bay of Bengal and the Rohingya refugee crisis have emerged as a major foreign policy challenge for Bangladesh. From

2015 onward, due to the violent situation in the Rakhine state of Myanmar, the displaced people had started to cross international border to reach Bangladesh through the western coast of Myanmar. The influx of the displaced Rohingya people has turned Bangladesh into a transit country (Fuller, 2015). It has created more business for transnational smuggling networks. The legislation of Bangladesh is not designed to effectively halt irregular migration through the Bay of Bengal (Rahman, 2015). In Bangladesh, there are two laws that regulate migration: *Overseas Employment and Migrants Act, 2013* and *Prevention and Suppression of Human Trafficking Act, 2012* (Rashid & Ali Ashraf, 2016). The Prevention and Suppression of Human Trafficking Act, 2012 has extra territorial application about human trafficking (Rahman, 2015). Section 5 of the Act makes an explicit mention of the extraterritorial application.

However, there are pitfalls in the aforementioned laws that compel aspiring individuals to rely on informal networks of intermediaries and smuggling agents for migration movement (Rashid & Ali Ashraf, 2016). The Act of 2013 does not provide any regulatory measure to curb such smuggling networks (Rashid & Ali Ashraf, 2016). Despite having experienced the influx of the Rohingya refugee since 2015, Bangladesh is yet to develop any specific national law and policy to tackle the crisis. An effective national legislative framework and policy, embracing law of the sea and human rights aspects, has been lacking. As a result, ambiguities exist in existing national laws regarding protection and safety of irregular migrants stranded at sea.

Southeast Asian states

In Southeast Asian countries, there is a lack of any national law that would recognise and protect non-refoulement and rights of irregular migrants (Tan, 2016). Malaysia, Indonesia, and Thailand are not a party to the 1951 Refugee Convention and the 1967 Refugee Protocol (Tan, 2016). Regarding the protection of irregular migrants stranded at sea, the situation is similar in the countries of Southeast Asia region, including Malaysia, Indonesia, and Thailand. Davies (2014) observes that countries of Southeast Asia region are yet to address the question of how to provide humanitarian protection. They appear keen to deter migrant individuals from seeking protection and transfer the burden to international institutions such as UNHCR (Davies, 2014). Therefore, Southeast Asian states consider asylum seekers and migrants as illegal until proven otherwise (Davies, 2014).

In Malaysia, there is no domestic policy on irregular migration (Venugopal, 2018). Malaysia's national legislation on immigration treats irregular migrants as criminals (Petcharamesree, 2017). The national legislation puts the burden of proof upon irregular migrants to ensure their regular status.

Among Southeast Asian states, Indonesia does not have any national asylum monitoring policy or mechanism (Venugopal, 2018). Indonesia is both migrant sending and receiving country. In Indonesia, however, the employment opportunity is meager (Petcharamesree, 2017). Migrant people usually arrive in Indonesia with a specific motive. Migrants depart Indonesia by boat to reach the coasts of Australia (Petcharamesree, 2017). Indonesia is neither party to any Refugee Convention nor has any international legislative measure to tackle maritime migration (Petcharamesree, 2017).

In Thailand, immigration policy toward irregular displaced people is patchy and harsh (Seltzer, 2013). Thailand lacks adequate legal framework to safeguard the human rights of asylum seekers and migrants. Most of its response measures toward refugee and asylum

seekers are temporary in nature (Petcharamesree, 2017). The Thai Immigration Act of 1979 has a provision for detaining individuals who enter the country without authorization. The Act penalizes such trespassers with imprisonment (Seltzer, 2013). Following the 2015 boat crisis in the Andaman Sea, Thailand began to mull over a policy framework to secure and manage migrant people (Tan, 2019). In 2020, Thailand enacted new law that introduced policy framework to grant protection to refugee and asylum seekers (Ryack, 2020). However, that newly enacted legislation is not specific about safeguarding basic human rights of the irregular migrants. Such a loophole also leaves ambiguities and questions about how the law will be applied towards irregular migrants stranded at sea. It is becoming evident that irregular migrants are being dragged into situation of remaining in legal limbo (Rungthong & Stover, 2020).

Australia

Australia is one among the major destination countries for ocean crossing displaced people in the Indian Ocean (Schloenhardt, 2002; Higgins, 2017). In Australia, the first irregular maritime migrant incident happened back in 1970s (Newland, 2016). Over the next couple of decades, thousands of asylum seekers made their way from Southeast Asia countries to the shores of Australia (Newland, 2016).

Australia passed a legislation in 1992 to permit the detention of unauthorized arrival of irregular migrants by sea. Two years after the enactment of legislation, in 1994, detention-related provisions were instead in the legislation. Later, at the beginning of 2000, decisions were taken to discourage unauthorized arrival by sea routes. Policy measures were taken to deny irregular migrants any valid visa. Australia also signed agreements in 2000 and made agreement with Indonesia and the International Organization for Migration (IMO) to detain suspected unauthorized migrants in Indonesia and to screen them through the officials of the IMO (Newland, 2016).

Regarding the current crisis, Australia has restrained itself from offering any resettlement policy, arguing that any offer to settlement would rather encourage an influx of additional irregular migrants to reach the shores of Australia (Taylor, 2015; Higgins, 2017).

The response of the Australian government has also revealed the struggle to reconcile the country's international legal obligations toward non-citizens who are in needs of protection, with national political interests and national security considerations (Higgins, 2017; O'Sullivan, 2017). In the national politics of Australia, performance in restricting the arrival of irregular migrants has been considered as the litmus test for competent governance (Newland, 2016). At the beginning of 1990, concerns arose in Australia over some irregular migrants reaching the shores of Australia, not necessarily refugees. Owing to this reason, Australia passed a legislation in 1992 to permit the detention of unauthorized irregular migrants by sea. Two years after the enactment of the legislation, in 1994, detention-related provisions were instead in the legislation. Later, at the beginning of 2000, decisions were taken to discourage unauthorized arrival by sea routes. Policy measures were taken to deny irregular migrants any valid visas (Newland, 2016).

However, in 2001, the *MV Tampa* incident provided an impetus for Australia to adopt a much harsher policy towards irregular maritime migrants through two vital legislations: (i) *Border Protection Act of 2001*; and (ii) *Migration Legislation Amendment 2002* (Newland, 2016). Through these laws, Australia established that unauthorized irregular migrant intercepted at sea or any excise territories would be ineligible for visa. Another important

step arising out from these legislations is that initiation of routine tracking and interception of unauthorized suspected vessels entering the Australian maritime zone from Indonesia. The most important change that the two laws authorized is the enactment of procedures to transfer irregular migrants to offshore locations outside Australia for asylum claims processing and repatriation (Newland, 2016). Following the crisis of 2015, Australia did not make any notable departure from its policy toward irregular migrants that might offer any humane solutions to the crisis (Wyeth, 2019).

A mandatory detention policy toward irregular migrants has become an essential component of Australia's migration regulation law (Higgins, 2017). It demonstrates that the country has no willingness to budge from its policy towards non-citizen irregular migrants who are in dire need of protection. This also shows that Australia has been working to shift its responsibility for international protection and management of migration flow to other migrant-receiving countries of the Indian Ocean region. Higgins (2017) observes that Australia's approach to irregular maritime migration crisis fails to balance the country's political and security interests with international legal obligations.

Missing links between approach and cooperation

The management of migration is associated with the rights and responsibility of sovereign states; hence, migration policy development is linked with national legislative and policy response (Nielsen, 2007). However, for the sake of security interest, a sovereign state can neither defy nor override its international obligation to protect and uphold human rights and human dignity (Tyagi, 1993). If the entrance of irregular migrants in a country violates the country's national immigration law, this should not deprive an irregular migrant of fundamental human rights (Grant, 2007).

A series of painful catastrophic events, including the drowning of stranded migrants in the Indian Ocean has invited serious attention to the issue of states' obligations to comply with international law norms and obligations. Most of the national laws of the coastal states of the Indian Ocean region provide brief penal sentences for migrant smuggling and irregular migrant offences (Chatterjee, 2014). Instead of addressing the root causes of irregular maritime migration, the Southeast Asian countries are focused on intercepting irregular migrants carrying vessels, turning them back to sea, and preventing them from disembarking at the coasts of Southeast Asia (Triandafyllidou & Maroukis, 2012).

Many treaty provisions of international law require implementation through national legislation. This procedure gives rise to legally enforceable rights and duties. For that reason, if any state fails to implement international law norms through national law and policy mechanism, that respective state's commitment to and ratification of any international law treaty becomes futile. Furthermore, such failure sometimes allows a state to evade its obligations to international law as well as an international community.

What becomes evident is that the national legislations are more concerned with safeguarding the national interests than the safety and welfare of the irregular migrants at sea. Few areas of the world have such complicated and harsh immigration practices – devoid of international human rights obligations – toward irregular maritime migrants in the Indian Ocean. To tackle irregular maritime migration crisis, any isolated legal and policy development would appear as a futile effort.

Conclusion

The irregular migration crisis in the Indian Ocean region reveals the grim fragility of International Law norms in the region (Tan, 2016). Measures exercised by the littoral states are symptomatic of a highly securitized approach (Kneebone, 2017). Policies and practices that might uphold the basic human rights of the irregular maritime migrants are more of an exception rather than the norm.

The article reveals that there is a deficit of international enforcement through national legislative and policy measures. Fair and transparent migration processes are still daunting challenges to the coastal states of this region (Rashid & Ali Ashraf, 2016). Lack of actual sense of duty to disembark rescued person at the place of safety is a vital gap in the national legislation. Both sending and receiving states have exhibited a tendency to put the crisis out of sight. Some states even do not have apt legal framework, institutional capability, and human resources to assist refugees and irregular migrants. Some other states adopt harsh and strict government policy to tackle the crisis.

The crisis of irregular maritime migration cannot be tackled exclusively by any single state. Irregular migrant originating countries may tackle the crisis more effectively if the national law and policy framework are in compliance with international law norms and principles. However, most of these countries of the Indian Ocean region have yet to comply with the international law norms and principles. Even during the turmoil of COVID-19 pandemic, irregular migrants stranded at sea are still being denied life-saving care and support. At this critical juncture, what is perhaps most conspicuously evident is that another humanitarian crisis, similar to 2015 crisis, might happen in the Bay of Bengal and the Andaman Sea. Once again, the Indian Ocean is turning into some kind of a graveyard for irregular migrants (Dozier, 2020).

To tackle irregular maritime migration crisis, any isolated legal and policy development would appear as a futile effort. However, a considerable degree of cooperation between sending and receiving states and an integrated approach would provide a effective response to the crisis of irregular migration. To summon broader regional solidarity in tackling the crisis, three agencies of the United Nations, that is, IOM, UNHCR, and UNODC, have called upon the littoral states of Southeast Asia to show compassion towards irregular migrants stranded and drifting in the Bay of Bengal and the Andaman Sea (UNHCR, 2020). It is suggested that in all cases, the exercise of legal mechanism should be consistent with requirements of treaty provisions of international law concerning migration issues. There should be a stronger emphasis on humane behavior and providing legal protection to irregular maritime migrants. In the midst of COVID-19 pandemic, aggressive maritime border management measures are, in fact, subduing norms of human rights and maritime law. Unless and until rescuing and safeguarding the stranded irregular maritime migrants becomes the first priority, we cannot be convinced enough of the compliance with the norms of human rights law and international maritime law.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Notes on contributor

Mohammad Rubaiyat Rahman is Assistant Professor of Law at the BSMR Science and Technology University, Bangladesh. Currently, Rubaiyat is appointed as Teaching Assistant at the University of Texas System, USA. He holds an LLB (University of Dhaka) and diploma in development rights (Kathmandu School of Law, Nepal). He received President's Scholarship Award for pursuing LLM at South Asian University (India) as well as Harry F Stiles Jr Scholarship for LLM in Admiralty Law at Tulane University Law School (USA). He is a member of public policy think tank 'Center for International Maritime Security' (CIMSEC). He is subject-matter expert in maritime security, irregular migration, counterinsurgency (COIN) and border dispute with concentration in the South Asia and Indo-Pacific regions. Rubaiyat serves as researcher at the Air University (USA) based think tank 'Consortium of Indo-Pacific Researchers'.

References

- Allchin, J., & Peel, M. (2015). Southeast Asia's economic surge lures Bangladeshis to sea. *Financial Times*, June 12. <https://www.ft.com/content/23014cb6-0dc1-11e5-aa7b-00144feabdc0>
- Amrith, S. S. (2013). *Crossing the Bay of Bengal: The furies of nature and the fortunes of migrants*. Cambridge: Harvard University Press.
- Andersson, R. (2012). A game of risk: Boat migration and the business of bordering Europe. *Anthropology Today*, 28(6), 7–11.
- Aronowitz, A. A. (2012). The human trafficking-organized crime nexus. In F. Allum & S. Gilmour (Eds.), *Routledge handbook of transnational organized crime* (pp. 217–233). London: Routledge.
- Barnes, R. (2010). The international law of the sea and migration control. In B. Ryan & V. Mitsilegas (Eds.), *Extraterritorial immigration control: Legal challenges*. Leiden: Brill.
- Betts, A. (2010). Towards a 'soft law' framework for the protection of vulnerable irregular migrants. *International Journal of Refugee Law*, 22(2), 209–236.
- Bhuiyan, J. H. (2013). Protection of refugees through the principle of non-refoulement. In R. Islam & J. H. Bhuiyan (Eds.), *An introduction to international refugee law* (pp. 99–132). Leiden: Martinus Nijhoff.
- Borelli, S., & Stanford, B. (2014). Troubled waters in the mare nostrum: Interception and push-backs of migrants in the Mediterranean and the European convention on human rights. *Review of International Law and Politics*, 10, 29–69.
- Browning, C. S. (2017). Security and migration: A conceptual exploration. In P. Bourbeau (Ed.), *Handbook on migration and security*. Cheltenham: Edward Elgar.
- Chatterjee, A. (2014). Non-traditional maritime security threats in the Indian ocean region. *Journal of the National Maritime Foundation of India*, 10(2), 77–95.
- Clark, S. (2018). Australia's extraterritorial asylum policies and the making of transit sites. In L. Karakoulaki, M. Southgate, & J. Steiner (Eds.), *Critical perspective on migration in the twenty first century*. Bristol: E-International Relations.
- Collett, E. (2016). Unauthorized maritime migration in Europe and the mediterranean region. In K. Newland, E. Collett, K. Hooper, & S. Flamm (Eds.), *All at sea: The policy challenges of rescue, interception, and long term response to maritime migration* (pp. 43–94). Washington, DC: Migration Policy Institute.
- Coppens, J. (2017). Interception of migrant boats at sea. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach*. Leiden: Brill.
- Davies, S. E. (2014). The 1989 comprehensive plan of action (CPA) and refugee policy in Southeast Asia: Twenty years forward what has changed? In A. Abass & F. Ippolito (Eds.), *Regional approaches to the protection of asylum seekers: An international legal perspective* (pp. 325–346). London: Ashgate.
- D'Orsi, C., Carciotto, S., & Johnson, C. R. (2017). Into Africa: 'Boat people' in sub-Saharan Africa. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach* (pp. 353–380). Leiden: Brill.

- Dozier, K. (2020). Refugee boats stranded at sea show how COVID-19 is making threatened groups more vulnerable. *TIME*, April 280. <https://time.com/5828548/coronavirus-sectarian-violence/>
- Ferreira, S. (2018). From narratives to perceptions in the securitisation of the migratory crisis in Europe. In M. Karakoulaki, L. Southgate, & J. Steiner (Eds.), *Critical perspective on migration in the twenty first century* (pp. 57–73). E-International Relations.
- Filippo, M. D. (2013). Irregular migration across the Mediterranean Sea: Problematic issues concerning the international rules on safeguard of life at Sea. *Paix et Sécurité Internationales*, 1, 53–76.
- Fuller, T. (2015). Asian states say they'll focus on causes on migrant crisis. *The New York Times*, May 30, 2015.
- Gammeltoft-Hansen, T. (2012). The perfect storm: Sovereignty games and the law and politics of boat migration. In V. Moreno-Lax, & E. Papastavridis (Eds.), *'Boat refugees' and Migrants at Sea: A comprehensive Approach*. Leiden: Brill.
- Gauci, J., & Mallia, P. (2017). The migrant smuggling protocol and the need for a multi-faceted approach: Inter-sectorality and multi-actor cooperation. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at Sea: A comprehensive approach* (pp. 119–144). Boston: Brill.
- Ghrainne, B. N. (2017). The 2015 Andaman sea boat 'crisis': Human rights and refugee law considerations. In S. Salomon, L. Heschl, G. Oberleitner, & W. Benedek (Eds.), *Blurring boundaries: Human security and forced migration* (pp. 123–136). Leiden: Brill.
- Giuffrè, M. (2017). Access to asylum at sea? Non refoulement and a comprehensive approach to extraterritorial human rights obligations. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach* (pp. 248–278). Leiden: Brill.
- Gleeson, M. (2017). *Regional cooperation on refugee protection: The unanswered questions*. Middle East Institute. <https://www.mei.edu/publications/regional-cooperation-refugee-protection-unanswered-questions>
- Goodwin-Gill, G. S. (2017). Setting the scene: Refugees, asylum seekers, and migrants at Sea-need for a long-term, protection centered vision. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach* (pp. 17–34). Leiden: Brill.
- Graham-Harrison, E. (2015). Burma's boat people 'faced choice of annihilation or risking their lives at sea.' *The Guardian*. <https://www.theguardian.com/world/2015/may/17/rohingya-burma-refugees-boat-migrants>
- Grant, S. (2007). The legal protection of stranded migrants. In R. Cholewinski, E. Perruchoud, & R. MacDonald (Eds.), *International migration law: Developing paradigms and key challenges* (pp. 29–48). The Hague: Asser Press.
- Guild, E. (2004). Who is an irregular migrant? In B. Bogusz, R. Cholewinski, A. Cygan, & E. Szysszczak (Eds.), *Irregular migration and human rights: Theoretical, European and international perspectives* (pp. 3–28). Leiden: Martinus Nijhoff.
- Higgins, C. (2017). The (un)sustainability of Australia's offshore processing and settlement policy. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach* (pp. 303–326). Leiden: Brill.
- Holmes, O. (2015). Rohingya in Burma: Claim that one in ten have fled on boats. *The Guardian*. <https://www.theguardian.com/world/2015/jun/09/ten-percent-of-rohingya-in-burma-have-fled-on-boats>
- Hong, N. (2012). Charting a maritime security cooperation mechanism in the Indian Ocean: Sharing responsibilities among littoral states and user states. *Strategic Analysis*, 36(3), 400–412.
- Karakoulaki, M., Southgate, L., & Steiner, J. (2018). Introduction. In M. Karakoulaki, L. Southgate, & J. Steiner (Eds.), *Critical perspective on migration in the Twenty First century* (pp. 1–14). Bristol: E-International Relations.
- Khurana, G. S. (2017). Maritime search and rescue and disaster relief in the indo-pacific: The need for 'national will'. *Journal of the National Maritime Foundation of India*, 13(2), 23–36.
- Klein, N. (2017). A maritime security framework for the legal dimensions of irregular migration by sea. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach* (pp. 35–59). Leiden: Brill.
- Klug, A., & Howe, T. (2010). The concept of state jurisdiction and the applicability of the non refoulement principle to extraterritorial interception measures. In B. Ryan & V. Mitsilegas (Eds.), *Extraterritorial immigration control: Legal challenges* (pp. 69–102). Leiden: Brill.

- Kneebone, S. (2017). Comparative regional protection frameworks for refugees: Norms and norm entrepreneurs. In S. Kneebone (Ed.), *Comparative regional protection frameworks for refugees*. London: Routledge.
- Komp, L. (2017). The duty to assist persons in distress: An alternative source of protection against the return of migrants and asylum seekers to the high Sea? In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach* (pp. 222–247). Leiden: Brill.
- Koser, K. (2011). The smuggling of refugees. In D. Kyle & R. Koslowski (Eds.), *Global human smuggling: Comparative perspectives* (pp. 256–272). Baltimore: Johns Hopkins University Press.
- Larking, E. (2017). Controlling irregular migration in the Asia-Pacific: Is Australia acting against its own interests? *Asia & the Pacific Policy Studies*, 4(1), 85–103.
- Lewa, C. (2008). Asia's new boat people. *Forced Migration Review*, 1(30), 40–42.
- Mallia, P. (2010). *Migrant smuggling by Sea*. Leiden: Martinus Nijhoff.
- Massari, M. (2015). At the edge of Europe: The phenomenon of irregular migration from Libya to Italy. In S. Massey & R. Coluccello (Eds.), *Eurafrican migration: Legal, economic and social responses to irregular migration* (pp. 12–37). New York, NY: Palgrave Macmillan.
- McAuliffe, M., & Koser, K. (2017). Introduction. In *A long way to go* (pp. 1–10). Sydney: Australian National University Press.
- McAuliffe, M., & Mence, V. (2017). Irregular maritime migration as a global phenomenon. In M. McAuliffe & K. Koser (Eds.), *A long way to go: Irregular migration patterns, processes, drivers and decision making* (pp. 11–48). Sydney: Australian National University Press.
- McInerney, T. (2000). People smuggling – an inhuman trade. *Platypus: Journal of the Australian Federal Police*, 68, 2–7.
- Missbach, A. (2016). *Rohingya Refugees in Aceh, Indonesia: Hostile Hospitality*. Middle East Institute. <https://www.mei.edu/publications/rohingya-refugees-aceh-indonesia-hostile-hospitality>
- Mitchell, C. (1989). International migration, international relations and foreign policy. *International Migration Review*, 23(3), 681–708.
- Moreno-Lax, V., & Papastavridis, E. (2017). Tracing the bases of an integrated paradigm for maritime security and human rights at Sea. In V. Moreno-Lax & E. Papastavridis (Eds.), *'Boat refugees' and migrants at sea: A comprehensive approach* (pp. 1–16). Leiden: Brill.
- Newland, K. (2016). Maritime migration: A wicked problem. In K. Newland, E. Collett, K. Hooper, and S. Flamm (Eds.), *All at Sea: The policy challenges of rescue, interception, and long term response to maritime migration* (pp. 1–42). Washington, DC: Migration Policy Institute.
- Nielsen, A. (2007). Cooperation mechanisms. In E. Cholewinski, R. Perruchoud, & R. MacDonald (Eds.), *International migration law: Developing paradigms and key challenges* (pp. 405–426). The Hague: Asser Press.
- Noonan, M., & Williams, E. (2016). Combating maritime transnational crime: An Australian perspective. *Journal of the Indian Ocean Region*, 12(1), 46–51.
- O'Sullivan, M. (2017). The ethics of resettlement: Australia and the Asia-Pacific region. In V. S. Kneebone (Ed.), *Comparative regional protection frameworks for refugees* (pp. 89–111). London: Routledge.
- Oxman, B. H. (1998). Human rights and the law of the sea. *Columbia Journal of Transnational Law*, 36, 399–429.
- Parnini, S. N. (2013). The crisis of the Rohingya as a Muslim minority in Myanmar and bilateral relations with Bangladesh. *Journal of Muslim Minority Affairs*, 33(2), 281–297.
- Petchamesree, S. (2017). ASEAN and its approach to forced migration issues. In S. Kneebone (Ed.), *Comparative regional protection frameworks for refugees* (pp. 21–38). London: Routledge.
- Piotrowicz, R. (2004). Irregular migration networks: The challenge posed by people traffickers to states and human rights. In E. Bogusz, B. Cholewinski, R. Cygan, & A. Szyzszak (Eds.), *Irregular migration and human rights: Theoretical, European and international perspectives* (pp. 137–155). Leiden: Martinus Nijhoff.
- Rahman, M. R. (2015). Human trafficking: A journey to hell. In T. D. Tribune (Ed.), *Juris: A layman's guide to the law* (pp. 164–167). Palal Publisher: Dhaka.

- Rashid, S. R., & Ali Ashraf, A. S. M. (2016). *Asian boat people and the challenges of migration governance: A source country perspective*. Middle East Institute. <https://www.mei.edu/publications/asian-boat-people-and-challenges-migration-governance-source-country-perspective>
- Rungthong, W., & Stover, C. (2020). Thailand's national screening mechanism: Key issues. *Opinio Juris*. <http://opiniojuris.org/2020/01/28/thailands-national-screening-mechanism-key-issues/>
- Ryack, G. (2020). *Thailand's new asylum law leaves refugees with more questions, few protections*. ASEAN Today. <https://www.aseantoday.com/2020/04/thailands-new-asylum-law-leaves-refugees-with-more-questions-few-protections/>
- Schloenhardt, A. (2002). *Organised crime and migrant smuggling: Australia and the Asia-pacific*. Canberra: Australian Institute of Criminology.
- Seltzer, A. (2013). Human trafficking: The case of Burmese refugees in Thailand. *International Journal of Comparative and Applied Criminal Justice*, 37(4), 279–293.
- Sitaropoulos, N. (2015). *Why international migration does not give a license to discriminate*. EJIL Talk. <https://www.ejiltalk.org/why-international-migration-law-does-not-give-a-license-to-discriminate/>
- Song, K., & Cook, A. D. B. (2015). *Irregular migration and human security in East Asia*. London: Routledge.
- Szablewska, N., & Karim, S. (2013). Protection of international cooperation in the international refugee regime. In R. Islam & J. H. Bhuiyan (Eds.), *An introduction to international refugee law* (pp. 189–244). Leiden: Martinus Nijhoff.
- Tan, N. F. (2016). *The Rohingya and Refoulement in Southeast Asia*. Middle East Institute. <https://www.mei.edu/publications/rohingya-and-refoulement-southeast-asia>
- Tan, R. (2019). *Ensure New Refugee Regulation Meets International Standards*. Asia Pacific Refugee Rights Network. 2019. <http://aprrn.info/joint-statement-ensure-new-refugee-regulation-meets-international-standards/>
- Tanaka, Y. (2012). *The international law of the sea*. Cambridge: Cambridge University Press.
- Taylor, S. (2015). Australia and Southeast Asia Refugee Crisis. *The Diplomat*. <https://thediplomat.com/tag/australia-southeast-asia-refugee-crisis/>
- Tervo, H., Hossain, K., & Stepien, A. (2009). Illegal immigration by sea as a challenge to the maritime border security of the European Union with a special focus on maritime surveillance systems. In T. Koivurova, A. Chircop, E. Frankx, E. J. Molenaar, & D. L. VandaarZwaag (Eds.), *Understanding and strengthening European Union and Canada relations in law of the sea and ocean governance* (pp. 387–406). University of Lapland Printing Center.
- Treves, T. (2010). Human rights and the law of the sea. *Berkeley Journal of International Law*, 28(1), 1–14.
- Triandafyllidou, A., & Maroukis, T. (2012). *Migrant smuggling : irregular migration from Asia and Africa to Europe*. New York, NY: Palgrave Macmillan.
- Tyagi, Y. K. (1993). Human dignity, national security and international responsibility. *International Studies*, 30, 381–409.
- UNHCR. (2020). *Joint Statement by UNHCR, IOM and UNODC on protection at sea in the Bay of Bengal and Andaman sea*. UNHCR. 2020. <https://www.unhcr.org/news/press/2020/5/5eb15b804/joint-statement-unhcr-iom-unodc-protection-sea-bay-bengal-andaman-sea.html>
- Ustubici, A. (2018). *The governance of international migration: Irregular migrants' access to right to stay in Turkey and Morocco*. Amsterdam: Amsterdam University Press.
- Venugopal, G. (2018). *Asia refugee policy analysis*. Xchange. <http://xchange.org/asia-refugee-policy-analysis/>
- Weiner, M. (1985). On international migration and international relations. *Population and Development Review*, 11(3), 441–455.
- Wilson, B. (2016). Human rights and maritime law enforcement. *Stanford Journal of International Law*, 52(2), 243–319.
- Wyeth, G. (2019). Australia and the case of the Rohingya. *The Diplomat*. 2019. <https://thediplomat.com/2019/09/australia-and-the-case-of-the-rohingya/>