

Towards the Benefit of All: Protecting Migrants' Rights in a Globalised World

*An Interview with Deputy Director General Ambassador Laura Thompson;
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Migration plays an important role in our interdependent society. What are the factors that have mobilised these migrants, and what role do they play in the global economy? Is there a way in which migration can be positive for individuals and societies at both ends of the migration spectrum?

The causes of migration are complex and myriad, and result in no small measure from the phenomenon of globalisation in the economic, political and cultural spheres. Factors including demographic and skills deficits in much of the industrialised world, insufficient employment possibilities in much of the developing world, persistent and increasing economic disparities, and global supply chains resulting from economic integration, indicate that migration is both necessary and here to stay.

Human rights violations, armed conflict, natural disasters, and, increasingly, climate change and environmental degradation also contribute to this unprecedented tide in human mobility.

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But at the heart of most of today's migratory movements and the prime motivation for people to migrate is the search for employment and their ardent desire to seek better socio-economic opportunities abroad.

Today, there are an estimated 214 million international migrants worldwide, more than two and a half times more than in 1965.¹ In an increasingly mobile and interconnected world structured on the promotion of ever freer movement of capital, goods and services, people necessarily follow. Every country and region in our interconnected world is today dependent on the labour, skills and knowledge that migrants bring or on the remittances that international migrants send home every year.

In the developed world as a whole, demographic trends show that without immigration, the working age population is expected to decline by 23 percent by 2050. During this time, the

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¹ Laura Thompson, 'A One-Size-Fits-All Approach to International Migration is Doomed to Fail', IOM Deputy Director General's Commentary (2009), <http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/docs/DDGs_commentary.pdf> accessed 12 June 2012.

working age population for Africa alone is expected to triple from 408 million in 2005 to 1.12 billion, while China and India are likely to account for 40 percent of the global workforce by 2030.²

In countries of origin, remittances remain a determining factor in whether there will be food on the table, medicines for health care, and education for children. Officially recorded remittance flows to developing countries in 2010 stood at USD 325 billion and are expected to reach USD 404 billion by 2013, according to the World Bank.³ That is twice the amount of foreign aid and equal to all foreign direct investment.

The priority for developed and developing countries alike, as well as for the global economy as a whole, is to have planned and predictable ways of matching international labour demand with supply, in safe, legal and humane ways.

I would argue that the real issue regarding migration is how to make it take place as a matter of choice rather than necessity and to ensure that this happens safely, legally and orderly so that people do not have to resort to using human smugglers and traffickers. It would eliminate not just the obscene profits these criminal networks make at the enormous physical, emotional and financial expense of migrants, but it would make migration essentially positive for individuals and societies at both ends of the migration spectrum.

Economically active migrants contribute substantially not only to their own well-being and that of their families, but also to the host and home countries. For example, a report from the US President's Council of Economic Advisers notes that native-born Americans gain an estimated USD 37 billion a year from immigrants' participation in the US economy.⁴ In the United Kingdom, a Home Office study estimates that the foreign born population contributes 10 percent more in government revenues than it receives in government

expenditure.⁵ Moreover, the person-power, skills, innovation and entrepreneurship migrants bring to their host societies can make a real difference, as is neatly illustrated by the percentage of new patents being taken out by immigrants in the US - a staggering 52 percent.

On the other side of the spectrum, families can and do move out of poverty as a result of migration, with remittances often making education and healthcare possible for family members back home. Beyond this, the knowledge, know-how, investment and other financial and social remittances migrants can bring to their countries of origin potentially open new possibilities for growth and stability. Furthermore, through the trade and investment networks they establish, and the skills and innovative ideas they transfer back to their home countries, migrants remain fully engaged in the development of their home countries.

Where possible, a rational case for labour migration can and should be made – in a context specific manner - and the required accompanying policies and actions should be put in place. The support of host country populations is essential to successful integration, and this, in turn, is the only way to ensure that immigrants get a fair chance of contributing, both for their benefit and that of the host society.

Therefore, it is critical that countries have a comprehensive understanding of their labour market needs and demographic trends, and, consequently, formulate migration policies and practices that allow them to attract migrants they need and in the numbers they need. At the International Organization for Migration ('IOM') we believe that migration is necessary and if intelligently and humanely managed, highly desirable.

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁶ recognises the human rights of migrant workers and promotes their access to justice, as well as to humane and lawful working and living conditions. It has, however,

'At the IOM we believe that migration is necessary and if intelligently and humanely managed, highly desirable'

2 ibid.

3 World Bank, 'Migration and Remittances Factbook 2011' (2010) Chapter 'World' and 'Developing' <<http://go.worldbank.org/QGUCPJTOR0>> accessed 12 June 2012.

4 International Organization for Migration, 'Acknowledge the Benefits of Migration and Share that Vision, Says IOM on International Migrants Day' (2010) <<http://www.iom.int/jahia/Jahia/media/news-releases/newsArticleEU/cache/offonce?entryId=28872>> accessed 12 June 2012.

5 Ceri Gott and Karl Johnston, 'The Migrant Population in the UK: Fiscal Effects' (Home Office Research, RDS Occasional Paper No 77, 2002) iii <<http://www.mediapart.fr/files/occ77migrant.pdf>> accessed 12 June 2012.

6 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 93.

only been ratified by 45 States.⁷ Why do you think the Convention has so few ratifications - especially among developed states - and what is the IOM's strategy to increase ratifications and promote the rights of migrant workers?

States, particularly high income ones, have argued several reasons for not ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Some of those are of a practical and administrative nature, such as the length and complexity of the instrument, the fear that it requires resources and coordination between different government departments, and issues surrounding implementation.

However, some states have pointed out legal and political reasons for not ratifying the Convention. The main two legal objections to the Convention have been that it extends and explicitly safeguards rights to migrant workers in an irregular situation and to members of the migrant workers' families. Another argument put forward is that migrant workers' rights are already adequately protected by other human rights instruments and, therefore, there is no need for the Convention.

Since 1998, IOM together with OHCHR, ILO, UNESCO and a number of relevant NGOs, has been part of the Steering Committee for the Promotion of the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In this context, IOM has carried out, in consultation with other Steering Committee members, many activities including seminars, trainings, and bilateral meetings with policy makers, in order to promote ratification of the Convention globally as well as in targeted states. At the request of the Albanian Government, IOM has been instrumental in assisting the authorities in understanding the ratification process and in assessing the compliance of national migration legislation with international standards.

In addition, IOM has systematically advocated that governmental authorities include in new or amended national migration legislation the principles and objectives of the Convention,

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such as the principles of fair treatment in working conditions, non-discrimination, developing humane possibilities for migration and collaboration between States in order to promote humane and dignified migration.

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Furthermore, since 2005 IOM has cooperated with the Committee on Migrant Workers ('CMW'), which monitors the implementation of the Convention, by providing comments on the initial reports of the States Parties as well as during the preparation of General Comments. In 2010, IOM provided input into the CMW's General Comment No. 1 on Migrant Domestic Workers.⁸ We also contribute to the CMW's Days of General Discussion specifically on the rights of migrant workers in an irregular situation and members of their families.⁹

One of the issues in the case of MSS v Belgium and Greece¹⁰ was whether the extreme conditions in which the applicant asylum seeker had lived in Greece amounted to degrading treatment. The Grand Chamber of the European Court of Human Rights found a violation of Articles 3 and 13 of the European Convention on Human Rights¹¹ and held that asylum seekers are a 'particularly underprivileged and vulnerable population group in need of special protection.'¹² What are your views on this case and on the plight of asylum seekers in Europe?

MSS is a landmark case and it is extremely important that the European Court of Human

7 UN Treaty Collections, 'Status of Treaties: Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families' <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en> accessed 12 June 2012.

8 UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'General Comment No. 1 on Migrant Domestic Workers' (23 February 2011) CMW/C/GC/1 <<http://www.unhcr.org/refworld/docid/4ed3553e2.html>> accessed 11 June 2012.

9 The Committee organises days of general discussion and can publish statements on themes related to its work and interpretations of the content of the provisions in the Convention. The Committee has adopted an outline of the draft 'General Comment No. 2' on the rights of migrant workers in an irregular situation and members of their families. For more information see <<http://www2.ohchr.org/english/bodies/cmw/index.htm>> accessed 11 June 2012.

10 MSS v Belgium and Greece App No 30696/09, ECtHR, 21 January 2011.

11 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

12 MSS v Belgium and Greece (n 10) para 251.

Rights ('ECtHR') decided on these issues. In this context, however, the Court noted that even if particular States that form the external border of the European Union are under considerable pressure and may have difficulties coping with the arrival of refugees and migrants, the obligations under Article 3 of the ECHR are absolute and must at all times be respected.¹³ The Court has previously emphasised the absolute character of Article 3 and it is opportune to underline that this does not only concern protection of asylum seekers and refugees, but equally migrants - irrespective of their migration status.

Whereas States certainly can determine who they accept on their territories, this competence must be carried out in full conformity with international obligations and, in particular, with due respect for the principle of *non-refoulement* (also in cases of non-refugees according to both the International Covenant on Civil and Political Rights, the Convention Against Torture, and the European Convention on Human Rights¹⁴), the right to liberty and security, and rights such as the right to life and the prohibition of torture or inhuman and degrading treatment.

Recognising both the sovereign right to determine policies on entrance and stay and the difficulties States may face in managing migration, IOM has always been involved in activities that assist States in living up to their obligation to treat every human being with respect and dignity. In this context, we carry out a number of training and capacity building activities and, in certain situations, also help to create better facilities for reception. Many States face practical difficulties when receiving migrants and for us it is a priority to help them manage the influx of migrants with the full respect for the individuals concerned.

The Court in *MSS* also underlined how the feelings of arbitrariness, inferiority and anxiety often associated with detention in holding centres, as well as the 'profound effects' this has on a person's dignity, amount to a violation of Article 3 of the ECHR. The arbitrariness

'migration detention should be phased out since it most often does not meet the requirements of 'necessity' and 'proportionality'

of detention and the conditions in detention facilities are always of concern. Again, it is within the competence of any State to detain, also administratively, migrants, but this has to be done with respect for international obligations and standards.

The UN Working Group on Arbitrary Detention has gone as far as to say that migration detention should be phased out since it most often does not meet the requirements of 'necessity' and 'proportionality'.¹⁵ In any case, there can be no doubt that there is a clear obligation on States to avoid arbitrary detention, to establish a maximum period for administrative detention and to ensure that any decision is subject to periodical judicial review.¹⁶ Furthermore, there is ample jurisprudence detailing what detention conditions should or should not be.

One important point to highlight: although *MSS* was a case relative to an asylum seeker, every person, including migrants, has human rights which must be respected.

The IOM witnessed the signing of a controversial agreement between Australia and Malaysia designed to combat people smuggling and discourage asylum seekers from risking their lives in small boats to reach Australia. Under the agreement, Malaysia was to send 4,000 recognised refugees to be resettled in Australia, and Australia was to send 800 asylum seekers to Malaysia for their asylum claims to be processed.¹⁷ However, Australia's High Court declared the agreement unconstitutional, as the rights of the asylum seekers could not be guaranteed in Malaysia, which is not a party to the Convention relating to the Status of Refugees 1951.¹⁸ What are your views on this case, on tackling people smuggling, and on the protection of the right to seek asylum?

¹⁵ UN Working Group on Arbitrary Detention, 'Report of the Working Group on Arbitrary Detention' UN Doc. A/HRC/13/30 (2010) para 58 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_en.pdf> accessed 12 June 2012.

¹⁶ See IOM, 'International Migration Law Information Note on International Standards on Immigration Detention and Non-custodial Measures' (2011) <<http://www.iom.int/jahia/webdav/shared/shared/mainsite/law/IML-Information-Note-Immigration-Detention-and-Non-custodial-Measures.pdf>> accessed 12 June 2012.

¹⁷ *Plaintiff M106 of 2011 by his Litigation Guardian, Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32, para 19.

¹⁸ *ibid* paras 132-136. Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

¹³ *ibid* para 218.

¹⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85; European Convention on Human Rights (n 11).

This decision of the Australian High Court touches upon a very relevant issue of extra-territorial obligations.

It was held by the High Court that the Minister for Immigration and Citizenship cannot validly declare a country as a country to which asylum seekers can be taken for processing unless that country is legally bound by international law or its own domestic law to:

- Provide access for asylum seekers to effective procedures for assessing their need for protection;
- Provide protection for asylum seekers pending determination of their refugee status; and
- Provide protection for persons given refugee status pending their voluntary return to their country of origin or their resettlement in another country.

In addition to these criteria, the Australian Migration Act 1958 requires that the country meet certain human rights standards in providing that protection.¹⁹

The main issue at stake in cases like this is where responsibility lies: first, when migration control is exercised outside the State's territorial jurisdiction; and second, when it is exercised by private actors – or a combination of the two. The concern is that these two ways of outsourcing control are used as a pretext to effectively circumvent basic human rights obligations.

However, to answer the questions about responsibility in this context an in-depth analysis of responsibility in refugee law and human rights law is required. In particular, the due diligence principle and the obligation to protect (both clearly established in international refugee law and international human rights law) will continue to apply in situations of extraterritorial 'outsourcing' of, for example, migration control and asylum procedures.

Concerning smuggling of migrants, it should first of all be noted that even if refugees use smuggling networks to enter a State, there is a specific legal regime governing the situation of refugees (namely international refugee law and,

'combating smuggling and protecting the human rights of migrants are not anti-thetical'

particularly, the 1951 Refugee Convention). Refugees are the only group that, according to international law, actually can 'infringe' on the State's sovereign right to determine rules on entry. A refugee has a right to have his or her claim examined and not to be punished for 'illegal' entry.

That said, combating smuggling and protecting the human rights of migrants are not antithetical. Smuggling often entails tremendous suffering of the smuggled person at the hands of the smuggler and combating smuggling is one way of protecting the rights of the individuals who may fall victim to transnational criminal networks.

Each international instrument relates to the place the organisation of reference occupies in the international multilateral structure - be it a crime or rights focused body. This means that even if smuggling is mainly dealt with from a criminal law perspective - since the crime is defined in a transnational criminal law instrument (the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime²⁰) - the perceived 'conflict' between combating smuggling and protecting rights is actually more a question of approach and context than a difference of intent.

IOM supports States both in the protection of migrants but also in combating criminal networks that organise human smuggling and trafficking. We do so by supporting States in organising and strengthening their border control capacities and creating awareness and supporting the competence of law enforcement on these issues.

The 1951 Refugee Convention²¹ was drafted at a particular time in history and as such, does not cover multiple reasons why people today leave their home and seek protection abroad. As a result, calls have been made to amend the Convention. Does IOM support or propose any amendments to the protections offered in the Refugee Convention? For example, recognising the environment, health or gender as a basis for protection?

19 Migration Act (Commonwealth) 1958 <http://www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/> accessed 18 June 2012.

20 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209, art 3, art 6.

21 Convention Relating to the Status of Refugees (n 18).

The core element of the definition of a ‘refugee’ remains the element of persecution and of being unable or unwilling to avail yourself of the protection of your State. This makes it impossible to apply to certain situations, such as that of climate change and environmental degradation. This, however, does not mean that people affected by such situations are not protected by human rights instruments.

The 1951 Refugee Convention - as other international treaties - has to principally be interpreted according to the Vienna Convention on the Law of Treaties (‘VCLT’).²² The UN Human Rights Committee, as well as the regional human rights courts, have expressly noted that the rules of interpretation in the VCLT contain the relevant international law principles for interpretation. This goes for human rights treaties as well as for other treaties such as the 1951 Refugee Convention. Since the overriding function of human rights treaties is the protection of individuals’ rights, it seems clear that their interpretation should make that protection effective. The same reasoning is valid for the 1951 Refugee Convention which, even if it is not a member of the human rights treaties ‘family’, has the objective to protect individuals.

The necessity of taking into account the changes occurring in society and in law has often been emphasised by the European Court of Human Rights, which has frequently underlined that the Convention is a living instrument that must be interpreted in the light of present day conditions. See eg the *Loizidou v Turkey*²³ decision of the ECtHR and also the Inter-American Court’s Advisory Opinion in *Mayagna (Sumo) Awas Tingni Community v Nicaragua*.²⁴

This evolutive interpretation has also been used to extend the protection under refugee law – for example including women as a ‘social group’. Thus, the inherent character of international legal instruments makes it possible to extend refugee protection to people who are persecuted and cannot or will not avail themselves of the protection of their State even in changed social

circumstances. The core of the definition, however, remains unaltered.

Despite the above, IOM believes that complex crises, triggered by natural and/or man-made events or causes, generate disorderly and predominantly forced movements of people, either internally or across borders, which expose affected populations to significant vulnerabilities and have lasting implications for societies, economies, development, environments, security and governance.

There is a growing recognition that existing legal categories of crisis-affected persons - such as refugees or internally displaced persons - may not fully capture the varied conditions of people in crisis situations, the many avenues used by persons to escape such situations, and the changing nature of circumstances over time. Approaches that focus solely on displaced persons, for example, may fail to reflect other realities - such as the high vulnerability of persons *unable* to migrate during crises and who remain trapped in dangerous conditions.

Placing crisis-related mobility in a larger migration context can shed light on latent structural factors that determine people’s migration behaviour before, during and after a crisis and promote effective ways to protect, assist and guarantee the human rights of affected persons. Complementary to humanitarian preparedness, response and recovery frameworks for complex crises, a migration management approach that examines all phases related to crisis response from the standpoint of human mobility is needed. This migration management approach must limit the adverse effects of unplanned, often forced migration on individuals and communities, whilst also recognising the role of mobility as a survival or coping mechanism. IOM is in the process of developing such an approach.

For migrants, gender is perhaps the most important single factor shaping their experience - more important than their country of origin or destination, their age, class, race or culture.²⁵ Women now make up almost half of the world’s migrant population, and are a particularly

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22 Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (Vienna Convention).

23 *Loizidou v Turkey*, App No 40/1993/435/514 (ECtHR, 28 November 1996).

24 *Mayagna (Sumo) Awas Tingni Community v Nicaragua* Advisory Opinion OC-10/89 (IACtHR, 14 July 1989).

25 IOM, ‘Gender and Migration’ (2002) <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/brochures_and_info_sheets/gender_factsheet_en.pdf> accessed 12 June 2012.

vulnerable group of migrants. Recognising this, the IOM has made efforts to mainstream gender into all of their planning and actions. What impact has this gender mainstreaming policy had on the IOM's operations, and what were some of the key obstacles and best practices?

According to the latest estimates, women migrants indeed represent more than 105 million people and almost half of the total migrant population. In other words, almost every other migrant in the world is a woman.²⁶ In fact, consistently over the past 50 years, nearly as many women as men have migrated and it is often useful to remember that women are not only recently appearing in migration flows, but already made up 47 percent of migrants in 1960. However, one noteworthy and fairly recent evolution in migration dynamics has been the increase in the number of women migrating alone to pursue opportunities of their own or to ensure the survival of their families in the face of, among other causes, increased male unemployment, poverty, as well as opportunities on the global care market.

While traditional migration theory has largely been gender-blind, there has been a growing recognition of the importance of gender as one of the critical factors shaping individual's migration experience. However, migrant women are not a homogenous group. They are not solely defined by their sex but also by a set of diverse identities formed for example by their race, ethnicity, family status, religion, culture, etc. A woman's experience of migration will therefore depend highly on who she is and how multiple factors of vulnerability such as her legal status, age, class, culture, ethnicity, language, education, employment status and working conditions, etc., interact and impact her situation. It is, therefore, a bit of a shortcut to say that migrant women are a particularly vulnerable group of migrants. It would be more appropriate to say that migrant women face specific vulnerabilities; vulnerabilities that are highly dependent on who they are, how they migrate, the place they have left, the society they are joining, and how these two 'communities' treat and view women, among many other factors.

Once this is understood, it is easy to imagine how for most migrant women, migration will result

26 UN Department of Economic and Social Affairs Population Division, 'Trends in International Migrant Stock: The 2008 Revision' (2009) 1 <http://www.un.org/esa/population/migration/UN_MigStock_2008.pdf> accessed 12 June 2012.

in both gains and losses, on both personal and professional levels. Our goal at the IOM since 1995 and the adoption of a policy committing the Organization to 'ensuring that the particular needs of all migrant women are identified, taken into consideration and addressed by IOM projects and services'²⁷, is to help create a conducive environment where women can migrate safely and where the gains outweigh the losses.

In order to achieve that, IOM adopts a holistic approach involving all of its services working in the areas of migration and development, labour migration, integration and cultural orientation, migrant assistance and counter-trafficking, emergencies and crisis, health, human rights and international migration law, gender etc. The Organisation uses both targeted action for women to address critical problems such as sexual and gender based violence, discrimination or exploitation, as well as gender mainstreaming in general programmes. The ultimate objective is to ensure that both men and women benefit from our interventions in ways that respond to their practical and strategic needs and interests, removing obstacles and capitalising on opportunities.

Increasingly, women and other vulnerable migrants are falling prey to human traffickers for the sex industry. The IOM works to assist states in the development and delivery of programmes, studies and technical expertise on combating migrant smuggling and trafficking in persons in line with international law. Could you provide some examples of such successful IOM projects and highlight the legal barriers to tackling sex trafficking? Has increased international cooperation aimed at preventing trafficking succeeded in limiting its occurrence?

Trafficking occurs for a variety of reasons, not just for sexual exploitation but increasingly for forced labour, forced marriages, forced begging and exploitation for criminal activities. Trafficking is also a cross gender issue, with increasing numbers of men and children exploited for forced labour, according to the recent findings from IOM's Counter Trafficking database. The demand for cheap labour, sexual services and certain criminal activities are among the root causes of trafficking, while a lack of opportunity, resources and social standing are other contributing factors.

27 IOM, 'Gender and Migration' (n 25) 2.

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While the global scale of human trafficking is difficult to quantify precisely, as many as 800,000 people may be trafficked across international borders annually, with many more trafficked within the borders of their own countries.

IOM has been working to counter the trafficking in persons since 1994 using a comprehensive approach that involves providing technical assistance and building the capacity of governmental authorities to prevent and combat trafficking, and to develop national policies and legislation to prosecute and sanction traffickers and protect victims from the trade. In addition, IOM provides a wide range of services to help victims of human trafficking, including shelter, medical and legal assistance, vocational training, assisted voluntary return to their country of origin, and reintegration assistance once they return home. In this context, IOM has implemented more than 800 projects in over 100 countries, and has provided assistance to approximately 20,000 trafficked persons.

International cooperation to combat human trafficking has improved. One of the important initiatives in this regard has been the UNGIFT - United Nations Global Initiative to Fight Human Trafficking²⁸ - which aims at creating synergies between all agencies working on the issue of trafficking and including all relevant stakeholders so as to create an effective global strategy. From the legislative point of view, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Palermo Protocol') supplementing the United Nations Convention Against Transnational Organized Crime,²⁹ is now widely viewed as a global standard and underpins the '3P' paradigm - prevention, protection, and prosecution - which increasingly serves as a framework used by governments around the world to combat human trafficking.

International progress in implementation of the Protocol is monitored by the US Department of

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State's Office to Monitor and Combat Trafficking in Persons, which employs diplomatic, economic, political, legal, and cultural tools to advance the '3P' paradigm worldwide.

That said, while the States Parties to the Palermo Protocol are required to criminalise the conduct of trafficking in persons as defined in the Protocol domestically, the lack of specific legislation against trafficking in persons is arguably a serious obstacle in countering the crime. In the absence of legislation, it is very difficult to punish human trafficking and bring the traffickers to justice. More and more States are adopting anti-trafficking legislation and this is a positive step in the right direction. One significant obstacle may be the considerable confusion as to what 'trafficking' actually is and what the definition in the Protocol entails.

There is a need to harmonise legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in preventing trafficking and related exploitation. It is important to note that not only anti-trafficking and criminal legislation is required. In order to effectively combat this scourge, labour laws and immigration laws also need to address exploitation, the protection of victims and fight criminal networks.

Despite the fundamental importance of democracy to human rights, states have imposed restrictions on the right of non-resident citizens to vote. Many emigrants believe that their citizenship entitles them to exercise their political rights even when they reside abroad. The recent ECtHR case of Sitaropoulos and Giakoumopoulos v Greece concerned Greek nationals who were unable to vote in Greek elections from their country of residence, France.³⁰ The question put to the Grand Chamber was whether Article 3 of Protocol 1 to the ECHR obliged states to enable expatriate citizens to vote from abroad. The Court held that neither the relevant international law, nor the practices of states, revealed any obligation or consensus that would require states to facilitate voting by expatriate citizens. Can you comment on this case, and explain how the IOM advocates the political rights of migrants?

28 UNGIFT was launched in March 2007 by the International Labour Organisation, the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the United Nations Office on Drugs and Crime, the International Organization for Migration, and the Organisation for Security and Cooperation in Europe.

29 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

30 *Sitaropoulos and Giakoumopoulos v Greece* App No 42202/07 (ECtHR Grand Chamber, 15 March 2012).

It seems sound to conclude that international law and State practice do not provide a basis for stating that a right to vote for people living abroad is explicitly guaranteed. However, a few points in the judgment (both of the Chamber³¹ and of the Grand Chamber) are worth noting.

In its judgment of 8 July 2010, the ECtHR Chamber held that there had been a violation of Article 3 of Protocol No. 1 to the Convention. It took the view that the present case did not concern the recognition of the applicants' right to vote as such, which was already recognised under the Greek Constitution, but rather the conditions governing the exercise of that right by Greek nationals living abroad.

The Grand Chamber noted that as regards restrictions on expatriate voting rights based on the criterion of residence, the Convention institutions have accepted in the past that these might be justified by several factors:

- Firstly, the presumption that non-resident citizens are less directly or less continually concerned with their country's day-to-day problems and have less knowledge of them;
- Secondly, non-resident citizens have less influence on the selection of candidates or on the formulation of their electoral programmes;
- Thirdly, the close connection between the right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected; and
- Fourthly, the legitimate concern the legislature may have to limit the influence of citizens living abroad in elections on issues that, while admittedly fundamental, primarily affect persons living in the country.

Even if the Grand Chamber did not find a violation of Article 3 Protocol 1 ECHR in this case, it did state that 'the presumption in a democratic State must be in favour of inclusion'.³²

IOM fully supports the inclusion of migrant communities, refugee and displaced populations in the democratic electoral processes in their countries or territories of origin. In this regard,

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IOM has a strong tradition of organising and supporting Out-of-Country Voting ('OCV')³³ that allows those residing abroad to become active participants in the electoral process and, thus, to be represented in civil and political life at home, even if they are unable or unwilling to return.

Since 1996, IOM has assisted hundreds of thousands of eligible nationals in 74 different countries to exercise their right to vote, in a combination of mail and in-person operations in the largest external voting programmes, most recently in Afghanistan (2004), Ecuador (2006-2007) and Iraq (2009).

Beyond elections, the engagement of the diaspora with their country of origin can have numerous beneficial outcomes. The diaspora can contribute to home country development in both financial and non-financial ways, including through remittances, investment, trade, entrepreneurial activity, skills and knowledge transfer, political, social and cultural exchange, and support for democratisation and the protection of human rights.

While migrant remittances have become the subject of a growing body of research in the past ten years, details about other types of diaspora contributions often remain unknown and therefore require further study. In recent years, awareness of the role of migrants and diasporas in development has increased, along with the realisation that the extent to which diasporas can and will contribute to development depends largely on the policies, institutional frameworks, and political and economic environments in countries of origin and destination.

The interest in diaspora engagement is illustrated by the fact that over the last ten years, a growing number of countries have established government bodies with specific responsibility to deal with these issues. To support governments with diaspora engagement initiatives, IOM provides governments and diaspora organisations with technical and programming support. The Organization is also planning to organise a 'Diaspora Ministerial Forum' in 2013 of those entities specifically dealing with diaspora issues

31 *Sitaropoulos and Giakoumopoulos v Greece* App No 42202/07 (ECtHR, 8 July 2010).

32 *Sitaropoulos v Greece* (2012) (n 30) para 71.

33 IOM, 'IOM Support to Out of Country Voting', <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/mepmm/op_support/esu_ocv_080107.pdf> accessed 12 June 2012.

to provide an opportunity to take stock of these various initiatives, and to identify and share innovative practices and 'lessons learned'.

In November 2011, a migration case gained significant attention in the Dutch media and politics. Mauro Manuel, an Angolan asylum seeker in the Netherlands, was to be deported to his country of nationality, as he was turning 18 and, therefore, no longer qualified as a minor. Manuel had originally sought protection in the Netherlands as an unaccompanied minor at the age of ten years. He was taken in by a host family and adopted Dutch culture and language. The Minister's decision to deport Manuel was vehemently criticised, including on the basis of a violation of the right to family life. Manuel was eventually granted a one year renewable study visa to attend university. How does IOM advocate rights and protection of unaccompanied migrant children, and how can situations like this be prevented and resolved?

Issues specific to minor asylum seekers and migrants who lose their protection status once they turn 18 are all too common. Over the past decades, the attention towards the rights of minors - the minor as a right holder, as an active agent and as someone with a voice in all processes as guaranteed by the Convention on the Rights of the Child 1989³⁴ ('CRC') - has taken a firm hold in policies and programmes concerning minors.

Lately there has been more attention given to the issue of minors who have residence and protection on the grounds that they are minors. On turning 18, they will then have to leave the country to which, in many cases, they have become attached.

As highlighted above, the return and reintegration of children and young adults is a highly complex issue, even more so if this takes place in a forceful manner. Assisted voluntary return programmes for unaccompanied migrant children and also unaccompanied migrant children who have recently turned eighteen ('aged-out minors') can therefore present a valuable alternative; they allow the children to return home in a dignified manner, while also providing them and their families with reintegration assistance, in order to contribute to the sustainability of the return

³⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, specifically art 2 (non-discrimination), art 3 (best interests), art 5 (evolving capacity) and art 12 (participation).

process.

Nonetheless, IOM does not dispute that even the option of voluntary return and reintegration might not be feasible for those unaccompanied migrant children who migrated at an extremely young age, and who have been living in their country of destination for most of their youth. Throughout the years, these young migrants have reached a very high level of integration that is often impossible to achieve for older migrants, even if they migrate legally.

At the same time, considering the vulnerability of unaccompanied migrant children and the widely established agreement that this group of migrants should not be subject to measures such as detention for expulsion, situations such as the one of Manuel should not lead to the conclusion that the only solution for these kind of cases is the forced return of the minor immediately after a decision on application for asylum and/or residence has been reached.

In my opinion, in cases where minors have demonstrated their will and motivation to integrate and pursue a legal residence in their country of destination, particularly those unaccompanied migrant children who migrated at an extremely young age, and who have been living in their country of destination for most of their youth, governments should consider the possibility of granting them an opportunity to engage in higher education and/or lawful employment, which would subsequently allow them to obtain residence in the host country similar to other migrants who migrated legally in the first place.

Alternatively, if the only response to unaccompanied migrant children remains deportation immediately upon reaching adulthood, the risk remains that they go underground and stay in an irregular situation, with all the attendant challenges and vulnerabilities.

IOM aims at protecting migrant children who have been separated from their parents and other relatives. IOM proposes measures to pursue this aim, including providing education and the appointment of a guardian.³⁵ However, these

'The return and reintegration of children and young adults is a highly complex issue, even more so if this takes place in a forceful manner'

³⁵ IOM, 'IML Information Note on the Protection of Unaccompanied Migrant Children' (2011) <<http://www.iom.int/jahia/webdav/shared/shared/mainsite/law/InfoNote-Unaccompanied-Migrant-Children-Jan2011.pdf>> accessed 12 June 2012.

measures might encourage parents in developing countries to send their children unaccompanied to States implementing such measures to improve their circumstances. The IOM also proposes preventive measures and aims at reuniting children with their families. How can parents be discouraged from sending their children abroad, while ensuring unaccompanied minors receive the care and protection they need?

Migrating children and youth - whether between or within countries and whether accompanied by their relatives or not - have become a recognised part of today's global and mixed migration flows.

In line with the increased attention paid to child migration as part of the larger phenomenon of family migration, transnational families and family reunification, the work of IOM has substantially grown in relation to providing assistance to children on the move, particularly those who are unaccompanied. Today, the work of IOM with unaccompanied migrant children takes place in many different contexts, including emergency/humanitarian assistance, internally displaced persons, assisted voluntary return and reintegration, counter trafficking, family tracing/reunification, migrant health, resettlement, reintegration of former combatants and research.

The reasons for which children emigrate from their country of origin vary and - whether the decision was an individual one or a family based decision - the root causes for emigration are the same as those for adults; some flee war and persecution in their home countries, while a large proportion migrate in search of economic and educational opportunities. Despite their apparent greater vulnerability, unaccompanied migrant children are not freed from the highly politicised debates on immigration policies and child welfare systems in host countries. The public discourse is usually polarised between two key policy considerations: 'integration' or 'return'. This is directly linked to the fears of governments in destination countries that any favourable reception and/or assistance to unaccompanied migrant children constitute a pull-factor for children in countries of origin to migrate.

While acknowledging this situation, IOM considers paramount the respect for the international legal framework and, more specifically, the Convention on the Rights of the Child ('CRC'). Being an international treaty

'the search for the most appropriate solution for unaccompanied migrant children should be based on the children's best interests and needs'

and binding on, currently, 193 States Parties,³⁶ the CRC is a comprehensive instrument that sets out the rights of all children 'irrespective of [their]... national... origin...or other status.'³⁷ Consequently, States are under an obligation to assist and protect unaccompanied migrant children, in the same way as national children. With this framework in mind, the search for the most appropriate solution for unaccompanied migrant children should be based on the children's best interests and needs, while preventing the creation of additional pull-factors for children to migrate. In cases where voluntary return and family reunification is in the best interest of the child, IOM has provided vital assistance to unaccompanied migrant children willing to reunite with their parents or relatives. Over the past years, an increasing number of IOM offices with their respective partners have become engaged in implementing family assessments, family tracing, and facilitating family reunification.

Importantly, an integral part of this return assistance to children is the provision of reintegration support in the country of origin. This is viewed as having a long-term, positive effect on the child and his/her family and includes, for example, education/training support for the child. It is often also linked to broader support directed at the parents in order to improve the overall socio-economic situation of the family. This reintegration assistance aims in general at helping to minimise the risk of discrimination by the local population and to maximise the sustainability of returns through institutional/community support approaches that take into account the needs of the individual returnee and his/her immediate family/community environment. This is particularly important when children return to an area where there are other populations of children and adolescents who are equally vulnerable (including internally displaced persons and street children). Moreover, IOM has worked in countries of origin to strengthen local capacity for inter-institutional coordination of referral of child returnees, to ensure that the conditions in communities, schools, etc. are conducive to a sustainable reintegration. This type of support assists to reduce the push-factors

³⁶ UN Treaty Collections, 'Status of Treaties: Convention on the Rights of the Child' <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> accessed 12 June 2012.

³⁷ Convention on the Rights of the Child (n 34) art 2.

in communities of origin that have led to the families' decision to send their child away for the purpose of supporting the family income.

Clearly, if there is a choice between assisting and protecting children who are on the move and not doing so for fear that this may become a pull-factor, the choice must be to offer protection and assistance in accordance with the CRC.

How do you describe the role of Deputy Director General at the IOM? What are the greatest challenges of holding this position and what are some of your biggest successes?

According to the Constitution of the International Organization for Migration, the positions of Director General and of the Deputy Director General are elected by the Council of Member States. While the specific functions of the Deputy Director General are not defined by the Constitution, the Deputy Director General functions as the alter ego of the Director General. The Deputy assists the Director General in administering and managing the Organization in accordance with the Constitution and the policies and decisions of its Governing bodies, represents the Organization and conducts political dialogue with IOM Member States, observers, other international organisations and civil society actors. The position also includes defining policies, strategies and prioritising action as well as administering and managing the Organization's budget and staff.

I have been responsible for the successful implementation of a worldwide structural reform to further decentralise the Organization's operations, become a more field-centred, efficient and strategic partner to the countries and beneficiaries it serves.

In that context, and with the assistance of a variety of staff members, I developed and implemented a phased plan for the creation of the new regional offices and the transformation of previous administrative structures. I have also established a Human Resources Strategy to address staff movements resulting from the creation and suppression of positions due to the implementation of the new administrative structures and liaised with the Staff Association Committee ('SAC').

The aim of this review was to ensure clarity in roles and responsibilities, reporting lines,

decision-making processes and accountability of the new administrative structures. I feel that this has strengthened the Organization's coherence and consistency of action worldwide, with an emphasis on the quality of programming, improved oversight and accountability, and better performance evaluation capacity.

The changes in the administrative structures were successfully undertaken within the envisaged time frame and in close consultation with the SAC and our Member States, which were thoroughly engaged and supportive despite the magnitude and complexity of the exercise. ■

'I have been responsible for the successful implementation of a worldwide structural reform to further decentralize the Organization's operations'