**Banking on Regulated Openness and Mobility**

**François Crépeau**

**UN Special Rapporteur on the Human Rights of Migrants**

**“High Commissioner’s Dialogue on Protection Challenges: Protection at Sea”**

**Closing Plenary Session, 11 December 2014, 3pm**

**Palais des Nations, Room XXII**

Mr. President, Ladies and Gentlemen,

I’m sorry I missed your previous deliberations, as I just came back from a mission to Italy and Malta, precisely on the rights of migrants at the external borders of the EU. I hope not to repeat too much what has already been said.

My main conclusion is that, if we are to witness a significant decrease of deaths and suffering at borders, we must bank, not on strict closure and repression, but on regulated openness and mobility.

Migrants come due to push factors – conflict, natural disasters, persecution or poverty –, which are particularly strong at present due to the crises in Syria and the horn of Africa. They also come due to pull factors such as the unrecognized cheap labour needs of destination States, especially in construction, agriculture, hospitality or care-giving. None of these factors are likely to decrease in the foreseeable future.

Migrants don’t believe that they are doing anything wrong. Who can say that survival strategies, such as looking for protection against violence or a job to support one’s family, are wrong? We would do the same if we were in their shoes. There’s no moral high ground on this issue and criminalisation of irregular migration is not an effective answer. For example, how can we expect millions of Syrians to quietly wait, may be for decades, and in transit countries where they have no foreseeable future, that we eventually think of taking care of their children?

Without regular migration channels, continued repression of irregular migration is counterproductive. Indeed, it drives migrants further underground, thereby empowering and entrenching smuggling operations and underground labour markets where criminal rings and unscrupulous employers exploit them.

While it is important to bring smugglers to trial for the suffering they inflict on migrants, destination countries will not succeed at fighting resourceful and adaptable criminal rings unless they reduce their underground markets for travel services and destroy their successful business model, which were created when barriers to migration were erected and which thrive at evading repressive policies. Destination States are in effect responsible for creating conditions that induce smuggling.

We must accept that repression doesn’t deter migration: it is in the DNA of humanity. We must acknowledge that we’ll be powerless to prevent migration in a democratic way, as we won’t allow ourselves the levels of violence that would be needed to stop it. We must therefore recognise migration as a fact of life, and regulate it.

Sealing international borders is impossible, it’s a fantasy, which is bound to fail. As we have already seen this year, migrants will continue arriving despite all efforts to stop them through repressive mechanisms such as pushbacks or detention.

Search and rescue operations such as Mare Nostrum are absolutely essential to save lives in the present crisis, due to the preeminence of the push factors. Providing humanitarian support should be seen as a common duty for all States and not as another pull factor. We wouldn’t be in such an emergency situation if robust refugee resettlement programmes and legal channels for labour migration were implemented.

Externalizing controls, i.e. trying to have transit countries stop migrants on their territory, will only go so far, as such countries do not have an interest in investing resources in policies and practices which, in the end, benefit only destination states.

Abandoning frontline European states to take on the responsibility of the unprecedented flows of migrants arriving at Europe`s borders also compromises rights. In particular, Europe must recognize the practical limitations of the legal procedures of the Dublin system, which severely limit the options offered to migrants and place all the responsibility of migration control on front line states such as Malta, Cyprus, Italy and Greece. Europe cannot expect that such countries will use violence against tens of thousands of migrants who haven’t committed any crime, in order to implement identification mechanisms, such as fingerprinting, when such migrants are reluctant to do so because of the consequences attached to such identification, in particular the inability to move beyond the European country responsible for the entry and the prohibition of claiming asylum in the country of their choice, where they think they have the best chances for integration.

This is especially true, as some northern European States have made little use of the family reunification clause, the humanitarian clause, the sovereignty clause, or the principle of the best interest of the child, all mechanisms which could enhance the mobility of migrants throughout Europe and facilitate their integration.

We must realise that the return of migrants to the frontline countries of Europe constitutes a punishment for both the migrant and the frontline country. In effect, the Dublin logic has already collapsed, as most migrants cannot effectively be identified and fingerprinted. It is demonstrably unsustainable with important migration flows.

Border controls are necessary, but one should create an environment that allows them to function. Instead of ineffective prohibitions, repressive policies and lengthy procedures, Europe must deploy incentives for migrants to use such legal procedures. It must recognise the agency and ensure the mobility of those migrants throughout the common territory, thus allowing them to live where they will find the best job opportunities and integration conditions, as is already the case for European citizens.

We all need less repression of survival migration and more harm-reduction policies. We must also come out of the panic mode. Migration flows are here to stay and we must develop a coherent human-rights-based common migration policy, with resilient infrastructures and operational mechanisms to be able to take in foreseeable peak migration flows. This means first building robust refugee resettlement programmes with an agreed-upon distribution key, preferably in partnership with other Global North States, as we did for the Indochinese in the 80s. This implies also creating easily accessible labour migration visa systems for which migrants will readily pay – instead of paying smugglers –, as was the case in the 50s and 60s. European countries would thus reclaim the control of most border crossings from the criminal rings.

This means that we also need another kind of political discourse about migration, a political discourse which would celebrate mobility and diversity, as well as equality and dignity, for all, and which would allow migrants to participate in the public debates and social conversations that concern them, everywhere.