

CHECK AGAINST DELIVERY



**Statement by Mr. François Crépeau,
Special Rapporteur on
the human rights of migrants**

Geneva, 01.06.2016

**MULTI-STAKEHOLDER MEETING ON THE
PROTECTION OF THE HUMAN RIGHTS OF
MIGRANTS IN LARGE MOVEMENTS**

Opening remarks

Mobility as dignity and the response to large migration movements

Ladies and gentlemen,

The high-level plenary meeting of the 19 September is an important moment to reflect on the mainstreaming of human rights into all aspects of the migration debate.

Geneticists tell us that we all come from the same women who lived 200,000 years ago in the Rift Valley. Migration is the normal condition of Humankind. As long as the drivers of migration – essentially violence and poverty – will remain, people will move. As we have always done: *sapiens sapiens* a migrating animal species. And 300 years of territorial nationalism will not change what our DNA dictates.

My long-term study on EU border management has shown that “sealing borders” is a fantasy and will not work. Migrants will continue to move. The over-securitisation of borders is unsustainable as its human and resource costs are huge. Migrants lose their lives and experience exploitation, and significant resources are invested into an ineffective system overwhelmingly focused on securitisation and not on maximising the opportunities offered by migration.

Hence, my repeated call to bank on mobility and to open up more channels for regular, safe and cheap migration options.

“Survival Migrant”

States generally recognise their obligation to protect refugees, in particular against refoulement, but they often dismiss people who are part of mixed migration movements as « economic migrants » who need no protection and should be quickly sent home. However, we all need the protection of our rights, and migrants are no exception. The whole human rights regime applies to all human beings, including refugees and other migrants, and some of us benefit from additional

protection regimes, for example as children, as persons with disabilities, as refugees, thanks to specific human rights treaties, or as workers, thanks to ILO conventions.

Many migrants who are not refugees also have protection needs and cannot simply be dismissed as « mere » “economic migrants”: they may be forced to migrate to escape poverty, violence, conflict, or the effects of climate change. Some will be at risk of torture, lack of vital medical care, or other serious human rights consequences if returned to their country of origin. Contrary to “expats”, “migrants” most often exercise their agency in an environment of heavy constraints and migrate out of a complex and changing mix of choice and force.

I like using the expression “survival migrants” to indicate all those who see no other choice but to leave their country. These will include all those who cannot feed their family or see no opportunity to offer a different future to their children and feel compelled to seek this future abroad. In a sense, refugees and survival migrants are in the same boat, often literally.

Many survival migrants find regular jobs as temporary workers in construction, hospitality, agriculture or domestic work. Some will become undocumented migrant workers. With or without status, most survival migrants will live in a state of precariousness, their fate determined by the decisions of others, vulnerable to abuse by employers or landlords, performing tasks at great financial, physical and psychological cost.

States policies should start to recognise and address the “pull” factors for irregular migration, namely the unrecognized need for low-wage migrant labour in destination States. Migrants always go to places where jobs can be found. There is an urgent need to open up a greater number of regular migration channels, to ensure that exploitative employers are sanctioned and to reduce the large underground labour markets that globalisation has spurred. Such opening of regular migration channels would lead to fewer instances of

irregular migration, less smuggling of migrants, less labour exploitation and less loss of life.

Reclaiming the market from smugglers

As long as there are insufficient regular avenues for migration, smugglers will thrive. Barriers to mobility create an underground market that mafias exploit. “Fighting the smugglers” is a red herring: as long as persons in need of mobility will not be provided with official mobility solutions, mobility solutions will be provided by opportunistic smuggling rings.

We must also remember that smugglers helping Central and Eastern Europeans escape communist regimes were deemed heroes and many owe their lives to the fact that their parents or grand-parents were smuggled out of repressive regimes (Nazi Germany, Franco’s Spain, Cambodian genocide or Taliban Afghanistan). As the Canadian Refugee Council said twenty years ago, “smuggling is a nasty business, but it saves lives”. Arguably, the refugees who made it across the Mediterranean in 2015 and reached Germany made the best decision of their lives in hiring a smuggler.

And we all must make an effort to avoid semantic confusion. To take only one example, politicians often use the expression “smuggling and trafficking” in their blanket condemnation of irregular border-crossings, thus confusing two very different activities in order to justify tougher border control measures. Trafficking and smuggling do not respond to the same drivers, although often performed by the same mafias. Trafficking always means exploitation and can exist without international migration: it needs to be combatted as slavery is. Smuggling can be done by family members in order to save one of their own, which can make it morally justified even if illegal. Like trafficking, smuggling is an underground activity and it operates in a lawless zone, rife with exploitation and human rights violations. But, contrary to trafficking, smuggling can easily be reduced by creating easier mobility regimes.

Only legalising, regulating and taxing mobility will allow States to reclaim the market and eliminate most of the smuggling.

We have historical examples of this. The prohibition of alcohol in the USA between 1920 and 1933 stopped when the American authorities realised that legalising, regulating and taxing the sale of alcohol was smarter than trying to fight Al Capone and the bootleggers from Montreal. 40 years of the present “war on drugs” have had no effect on consumption and the cartels are deadlier than ever: legalising, regulating and taxing marijuana, and opening safe injection sites seem a reasonable alternative. As we did for these two issues, we need to abandon counterproductive zero-tolerance policies which create so much misery for often little results, and to adopt harm-reduction policies which centre on the individual migrant’s well-being, rights and dignity, and are thus legitimised.

Moreover, until the 70s, visa-free travel was the rule rather than the exception: Mexicans entered the US easily and went back and forth across the border according to economic cycles, and millions of Africans and Turks entered Europe without difficulty to take up jobs, using ferries, with no deaths at sea, virtually no smuggling rings, and very small underground labour markets.

Many refugees and migrants would not spend 10,000 Euros and risk the lives of their children if there’s a meaningful possibility of regular, safe and cheap visas available in the near future. Efficient visa regimes would allow for all the security checks by intelligence agencies to be made in the transit countries, with enough time to process the claims. This would also considerably reduce the workload of refugee determination mechanisms inside destination countries.

Politicians in destination countries would also have the opportunity to show their electorate that borders are respected, that the authorities are managing migration properly, that there’s no “chaos on the beach”, that the reception mechanisms are in place

and aren't overwhelmed, and that the fear-mongering discourse of the nationalist populist politicians is based on stereotypes, myths and fantasies. And mainstream politicians would be able to develop a pro-mobility, pro-migration and pro-diversity discourse which has been singularly lacking in the past two decades.

For refugees, States should develop robust resettlement opportunities. For example, I have suggested a properly announced and effectively implemented resettlement programme to the EU for 500,000 refugees per year from Turkey, Lebanon and Jordan. If each country does serious recruitment in the transit countries, the number of persons to be processed by any one country would be entirely manageable: Germany would have to welcome 80,000 per year, France and Britain 60,000, Belgium 10,000, Switzerland 7,000.

For other survival migrants, smart visa opportunities that would allow migrants to come and look for jobs on the regular labour market would offer opportunities for both employers and workers. Individual skills would respond to labour needs, at a time when many employers around the Global North are complaining of present or impending labour shortages. Sanctioning exploitative employers and considerably reducing underground labour markets is key to obtaining results on this front.

States have ultimate responsibility for protecting the human rights of all

The debate on 19 September should involve discussions around how States can refrain from measures that are deemed, despite a dearth of evidence, to have a deterrent effect on irregular migration, such as criminalization of irregular migration, widespread detention without proper oversight, and externalisation of migration controls to transit countries.

While States have the power to admit, refuse to admit or return migrants, they equally have an obligation to respect the human rights of all migrants in the process.

They should develop measures to ensure the effective protection of all human rights of migrants, including the right to education, health, social security and adequate housing and labour rights for all migrants, including irregular migrants.

States need to increase the powers, the training and the funding of all national human rights mechanisms, such as national human rights institutions, ombudspersons, courts and tribunals, in order to provide adequate oversight of all migration processes and legitimise those that do not violate the human rights of migrants.

Access to social actors, such as health care personnel, school personnel, labour inspectors, social workers or local police, should be facilitated for all migrants, including irregular migrants, who should not fear immigration sanctions simply for calling for help from public services. As now recommended by the Council of Europe, States should implement “firewalls” between immigration enforcement and public services in order to allow the latter to perform their mission in favour of all, including migrants.

The “firewall” between immigration enforcement and public services means that the latter should not be used as auxiliaries of immigration enforcement, which itself should be well-trained and human-rights-sensitive. Undocumented migrants should be able to access health care, education, police, social services, public housing, labour inspectors and other public service agents, without risking being reported to immigration authorities. Otherwise, they will never report human rights violations and the perpetrators will benefit from practical immunity.

As far as labour rights are concerned, migrant workers, including those in an irregular situation, should be considered as workers first: all labour standards should be respected, and proper wages and adequate compensation paid, despite the migrant worker being in an irregular situation and susceptible to being deported: labour inspectors should be able to sanction employers upon receiving complaints from

any worker, without the obligation to transfer any information to immigration enforcement.

The same applies to migrant children, who should be considered children first and foremost. Access to education and healthcare should not be restricted on account of the legal status of their parents. Immigration detention should be prohibited when children and families with children are concerned, and non-custodial alternatives to detention should be available when necessary. Competent guardians should be provided to all unaccompanied minors.

And, as recommended in *Agenda 2030 for sustainable development*, States should also improve data collection and adopt clear performance indicators in all areas relevant to migration, in order to make informed policy decisions.

Global migration and mobility governance

I continue to be concerned over the fact that migration is still mostly governed unilaterally, in a very ad hoc and reactive way, without any long-term vision as to where we want to see ourselves in twenty or thirty years from now.

I'm struck by the fact that the "European crisis" has not yet spurred a collective effort to think through what mobility through external borders should look like in a quarter century, how visa facilitation and visa liberalisation should have progressed by then, thus reducing the reasons for large migration movements.

The 19 September meeting provides the platform to reflect on a strengthened institutional framework. Such a system should be UN-based, and must have as one of its core priorities the human rights of migrants. Migrants should always be seen first and foremost as human beings with human rights, rather than only as agents for development or as criminals.

The UN plays a key role as a forum for international cooperation, with human rights as one of its pillars: it is capable of embracing the extreme complexity and multidimensionality of migration movements, and it provides transparency and accountability mechanisms.

In view of the September summit, I wish to recall my 2013 report to the General Assembly on global migration governance. States should recognize the need for a stronger human rights-based institutional framework for migration at the UN. This would usefully complement informal migration governance outside the UN, including in the GFMD, in regional consultative processes, or at bilateral level. I had suggested that IOM, with its experience and expertise on migration, was an obvious candidate for integration inside the UN. I had also suggested that IOM would need a revised constitution that would include a clear human rights protection mandate, thus reinforcing the migrants' rights programmes and practices it has developed in the past decade.

In conclusion, the focus of the high-level plenary meeting of the 19 September should really be the human rights of all those who take part in large movements, be they refugees or migrants. They should all be recognised as human beings benefiting from the whole of the human rights regime, each according to their specificities. Migration policies can only be legitimate if they pass the human rights test, which is what courts and tribunals and other human rights mechanisms, try to uphold as much as they can.

If we define dignity as agency, as the ability to make choices for oneself, migration is always a dignity-seeking journey. We need to remind political leaders that no global migration regime will be sustainable without a strong human rights framework implemented thanks to effective expert human-rights-conscious institutions.

And we need to remind them as well that, if we work at it, governed mobility will ultimately help deal with the causes of large migrant and refugee movements. For this, we need a long-term data-supported strategic vision of how we want to collectively govern the inevitable human mobility.

I thank you for your attention.

