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## seminarios y conferencias

# **H**uman Rights and Trafficking in Persons in the Americas

**Summary and Highlights  
of the Hemispheric Conference  
on International Migration**



**Economic Commission for Latin America and the  
Caribbean (ECLAC)/Population Division,  
Latin American and the Caribbean  
Demographic Centre (CELADE)**

**International Organization for Migration (IOM)  
United Nations Population Fund (UNFPA)**

**Santiago, Chile, January 2004**

**H**uman Rights  
and Trafficking in Persons  
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on International Migration**

This document, produced with financial support from the United Nations Population Fund (UNFPA), was prepared by the Population Division of ECLAC-Latin American and Caribbean Demographic Centre (CELADE), in its capacity as technical secretariat for the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, which was held in Santiago, Chile, from the 20<sup>th</sup> to the 22<sup>nd</sup> November 2002. The text was written by Manuel Ángel Castillo, Professor and Research at El Colegio de México, with assistance from Ana González Casillas and Gabriela López Flores. It was prepared under the supervision of Miguel Villa, Director of CELADE, and Jorge Martínez Pizarro, a professional in the Population and Development Area of CELADE.

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## Abstract

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The present document consists of an overview and discussion of the highlights of the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, which was held in Santiago, Chile, from the 20<sup>th</sup> to the 22<sup>th</sup> November 2002. The introduction presents the background, objectives and organizational aspects of the meeting and gives an account of the opening ceremony. This is followed by a summary of the presentations and comments, with highlights of each session. Under the highlights, we have included also the statements of participants, especially of government representatives.

The subject matter of the meeting was divided up into the following topics and units:

1. International migration in the Americas;
2. Human rights of migrants. Unit I: Human rights and mobility of persons; Unit II: Gender and age concerns relating to the human rights of migrants; Unit III: Frameworks and programmes for promoting and protecting the human rights of migrants;
3. The trafficking in persons. Unit I: Trafficking in persons and human rights; Unit II: Baseline analysis of the trafficking in persons; Unit III: Prevention and assistance (best practices and future activities), subdivided into Unit III-A and Unit III-B.

A summary is included of the main elements expressed at the Conference, bearing in mind the contents of the presentations, commentaries and subsequent discussions. Reference documents are attached as appendices.



## Introduction

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This document contains summaries of the papers and comments presented at the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, which was held at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago, Chile, from the 20<sup>th</sup> to the 22<sup>nd</sup> November 2002. It also includes highlights of the discussions held at each of the sessions, a general summary of the content of the meeting and a set of appendices consisting of reference documents.

The Conference was organized jointly by ECLAC and the International Organization for Migration (IOM), which worked in collaboration with the Inter-American Commission on Human Rights, the Organization of American States (OAS) and the Office of the United Nations High Commissioner for Human Rights (UNHCHR). It was co-sponsored by the United Nations Population Fund (UNFPA), Inter-American Development Bank (IDB), United Nations Children's Fund (UNICEF), International Labour Organization (ILO) and Latin American Economic System (SELA).

## Background

The Conference was held in compliance with United Nations General Assembly resolution 56/203, which called upon the United Nations system and other intergovernmental organizations to support, and cooperate in, the processes and activities relating to international migration and with ECLAC resolutions 590 (XXIX) and 592 (XXIX) of 2002. ECLAC Resolution 590 (XXIX) on Population and

Development endorses the initiative of organizing the Conference among other priority activities for the period 2002-2004. ECLAC Resolution 592 (XXIX) approved the Calendar of Conferences of the Commission for the period 2002-2004, which included the holding of the Conference. Both resolutions fall within the framework of the Commission's mandate –through the Population Division-Latin American and Caribbean Demographic Centre (CELADE)– to monitor international migration trends of the population of Latin America and the Caribbean and their interrelationship with development); in addition, they are consistent with the activities of the Social Development Division of ECLAC through the Joint Human Rights Unit established by virtue of a special agreement with UNHCHR.

Reference should also be made to the IOM permanent mandate to collaborate on the administration of international migration, to promote full respect for the fundamental rights of migrants and to combat the trafficking in persons, based on the principle that migration if conducted in an orderly manner and under humane conditions, benefits both migrants and societies,

The Conference contributed to the activities in follow-up to the Third Summit of the Americas, held in Quebec (Canada), in April 2002. At that summit, the States of the Americas accorded political priority to the issue of migration and adopted a Plan of Action setting forth specific goals for promoting the human rights of migrants, including migrant workers and members of their families. The Plan recommends fostering cooperation with specialized international agencies in order to further and coordinate the efforts at implementation of the mandates of the Summit.

The Conference brought together the Governments of the ECLAC member countries, representatives of international organizations and eminent persons from the academic world. Also invited to participate were a number of civil society organizations involved in the issue of migration, who took part in the side event entitled the Forum of Civil Society of the Americas on the Mobility of Persons.

## **Objectives**

The purpose of the meeting was to strengthen cooperation among Governments in the area of international migration, which permitted the establishment of coordination activities and mechanisms for protection and promotion of the human rights of migrants, as well as combating and preventing the trafficking in persons.

### **Specific objectives**

- To contribute to a better understanding of the multiple causes of international migration and its consequences, in keeping with the conclusions, recommendations and resolutions of different forums and international organizations which have made statements on the issue.
- To examine and disseminate information on the mandates, activities and international agreements on the human rights of migrants.
- To contribute to the convergence of the regional consultation mechanisms relating to international migration by fostering the widest possible participation at the Hemispheric Conference by Governments, representatives of regional bodies dedicated to the issue of migration (Regional Conference on Migration or "Puebla Process", the Puebla-Panama Plan and the South American Conference on Migration), international organizations, non-governmental organizations, civil society institutions and experts.

- To identify problems relating to international migration which could be considered in the process of the Summit of the Americas.
- To analyse the main features of the Inter-American Programme of the Organization of American States for promoting and protecting the human rights of migrants, including migrant workers and members of their families, as provided for in the Plan of Action of the Third Summit of the Americas.
- To consider the guidelines and components of a joint work plan for systematically combating and avoiding the trafficking of persons in the Americas.

## Organization and agenda

The central issues of the Conference were addressed in panels made up of representatives of governments, international organizations, civil society organizations and academia. Each of the panellists was asked to prepare specific documents in advance of the event and various persons were invited to make comments on the content of these studies. The Conference was chaired by the delegation sent by the Government of Mexico.

Following the presentations at each session, the Chair of the Conference opened the floor to general discussions, giving precedence to the statements of representatives of States members of ECLAC. The agenda of the meeting was structured around three general issues, two of which were subdivided into units:

### 1. International migration in the Americas

Unit I: International migration in the Americas

### 2. Human rights of migrants

Unit I: Human rights and mobility

Unit II: Gender and age concerns relating to the human rights of migrants

Unit III: Frameworks and programmes for promoting and protecting the human rights of migrants

### 3. The trafficking in persons

Unit I: The trafficking in persons and human rights

Unit II: Baseline analysis of the trafficking in persons in the Americas

Unit III: Prevention and assistance (best practices and future activities); subdivided into Unit III-A and Unit III-B

A final panel was also held in the first part of which the Report of the Forum of civil society organizations was presented. Subsequently, guest speakers and members of civil society made a round of presentations on different aspects of the issues on the agenda. Lastly, the document setting out the preliminary conclusions of the conference was drafted, discussed and approved (See the final conclusions in appendix 1).

## Opening statements

*“The conclusion of agreements that increase the mobility of labour and strengthen governance of migration should be one of the priorities on the international agenda”.*

At the opening session, statements were made by José Antonio Ocampo, Executive Secretary of ECLAC; Richard Perruchoud, Executive Officer/Legal Adviser in the Office of the Director-General of the International Organization for Migration (IOM), on behalf of the Director-General of IOM, and Heraldo Muñoz, Minister and Secretary General of the Government of Chile.

In his address, Mr. Ocampo said that the Hemispheric Conference would further international agreements on migration as well as the agreements adopted at the Ibero-American Summit of Heads of State and Government, which had been held in the Dominican Republic (2002). He also considered that the Conference was “emblematic of the process of consolidation of the goals contained in the United Nations Millennium Declaration, which renewed and strengthened the mandates of the United Nations System on human rights and the pursuit of a more equitable global order”. The issue of international migration and human rights had occupied an important place among the Commission’s concerns, studies and proposals in recent years. It was the subject of several documents in circulation, as well as concrete actions, such as the establishment of the Human Rights Unit at ECLAC and the cooperation agreement signed with the Office of the United Nations High Commissioner for Human Rights, which gave rise in the short term to the appointment of a representative of that Office at ECLAC headquarters.

The vision of development that inspired and promoted the work of ECLAC implied a broad consideration of human rights in their most comprehensive version that is encompassing civil, political, economic, social and cultural rights. In that context, contemporary international migration processes must be analysed from that broad perspective and considered in the light of the principles of equality, solidarity and non-discrimination.

The current “era of migration”, as many analysts viewed it, required attention to the profound asymmetries characterizing the movements of population, which were increasingly significant and complex. The simultaneous presence of incitements and barriers to the mobility of persons posed a serious challenge to the Governments of the countries involved, both receiving and sending countries of population flows.

It was necessary to recognize and address the complex situations that were a product of contemporary migration. An increasing flow of resources could be observed, especially in the form of remittances of money from the countries of installation of the migrants; such remittances were increasingly significant for the economies of the countries and communities of origin. Meanwhile, there were also unquestionable repercussions in the social, political and cultural spheres as a result of the relationships established between the migrant communities and their home community.

Mr. Ocampo said that the different modalities of movements, especially undocumented movements were a source of serious risks for the persons migrating in search of better opportunities. Dealing with the problems derived from these situations, especially violations of the human rights of migrants, implied the adoption of effective policies for protection and assistance, especially to vulnerable sectors. In this regard, it was imperative to address the trends associated with this contemporary migration, for example smuggling and trafficking, which had become lucrative activities for individuals and organized groups. Hence the need for dialogue and cooperation among Governments of countries of the region, both on the bilateral and the multilateral level with a view to the adoption of a global agreement on migration policies.

Speaking on behalf of Mr. Brunson McKinley, Director-General of IOM, Mr. Perruchoud wished participants every success in their deliberations and conveyed Mr. McKinley’s regret at not having been able to attend such an important event. He pointed to the symbolic importance of holding the meeting in Chile, a country where the struggle for the defence of human rights had been particularly significant. He said that many Governments had started to review and discuss migration policies and the course that the mobility of persons might take in the future. At the multilateral level, initiatives had been taken at the recent Summits of the Americas, the Symposium on International Migration in the Americas (held in San José, Costa Rica, September 2000) and the

International conference on innovative strategies for combating the global trafficking in persons for purposes of sexual exploitation.

The Conference was another effort to highlight the need for an integral approach to migration and the firm belief that the protection of the human rights of migrants would only be possible if based on close cooperation. For that reason, he proposed that the event should be a forum for wide-ranging discussions and frank dialogue on the issue of the trafficking in persons, which, in his view, was the most serious form of violation of the human rights of migrants. Hence, the United Nations International Convention on Transnational Organized Crime and its two Protocols against smuggling of migrants and the trafficking in person, if adhered to by the requisite number of countries, could be an appropriate framework for the adoption of a Plan of Action that the IOM supported in a decisive way. The Organization had carried out a series of activities in that regard, particularly in the fields of prevention, institution-building, technical assistance and cooperation with Governments for protecting and assisting victims of such illicit practices.

According to Mr. Perruchoud, IOM considered that the results of multilateral forums for dialogue and cooperation, such as the Regional Conference on Migration and the South American Conference on Migration, enabled countries to advance with agreements that converged with the purposes of the current Conference. To that end, it was necessary to call not only for decisive action on the part of Governments but also for that of civil society organizations, whose presence at the event and in the side forum was a demonstration of their interest.

Mr. Herardo Muñoz, Minister and Secretary-General of the Government of Chile said that the global situation increased the mobility of persons and that, for example, demographic changes in developed countries acted in that respect, justifying the need for immigration. It was necessary to adopt common and global policies on the issue of international migration eliminating considerations based exclusively on cost-benefit relations in favour of the establishment of international agreements. He added that regional integration initiatives should facilitate the mobility of persons and that one should recover the traditional vision of Latin America as a land of hospitality.

At the same time, Mr. Muñoz described the experience developed by the Government of Chile in recent years in terms of international migration and highlighted the initiatives for the regularization of immigrants, the granting of work visas, the bilateral agreements adopted with other countries for promoting the integration of immigrants and the Government's concern to establish links with Chileans abroad.

All the speakers stressed their commitment to, and interest in, the Conference and expressed the hope that participants would be successful in their deliberations.



## A. International migration in the Americas

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### Unit I. International migration in the Americas

*“Globalization involves opposing movements, however: expectations of mobility become widespread, but the restrictions on movement become tighter all the time”.*

**Moderator:** Joseph-Alfred Grinblat, Chief of the Migration and Mortality Section of the Population Division of the United Nations.

#### 1. Speakers

(a) **Miguel Villa and Jorge Martínez Pizarro,**  
**International migration in the Americas of people  
from Latin America and the Caribbean**

The first presentation in the block was given by Miguel Villa and Jorge Martínez Pizarro<sup>1</sup>. According to the authors, the current phase of globalization included the following paradox: while the world was more interconnected and financial and trade exchanges increasingly freer, there remained serious obstacles to the free movement of persons. Those barriers were related to border protection and even existed between countries that had signed free-trade agreements. They led to an increase in illegal migrants and the

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<sup>1</sup> Officials of the Latin American and Caribbean Demographic Centre (CELADE) - Population Division of the Economic Commission for Latin America and the Caribbean (ECLAC).

criminal behaviour inherent in trafficking in human beings, which in turn left those involved without protection and in a vulnerable situation.

Disparities in countries' levels of development were the main reasons for international migration. The countries of the region would have to live with international migration, facing up to its many consequences, but also taking advantage of the opportunities it offered in terms of cultural exchange, for instance.

Developed economies had always needed workers from less developed countries for various labour and social areas. Examples included the less qualified immigrants required by employers seeking to reduce labour costs. Another phenomenon was the migration of professionals, which had increased in developed countries that had been obliged to review and even remove the barriers to that mobility. The strong debate surrounding the emigration of qualified people in what was known as the "brain drain" stressed its negative repercussions —since it was a factor that helped to widen gaps, undermined the formation of critical masses, and affected income distribution.

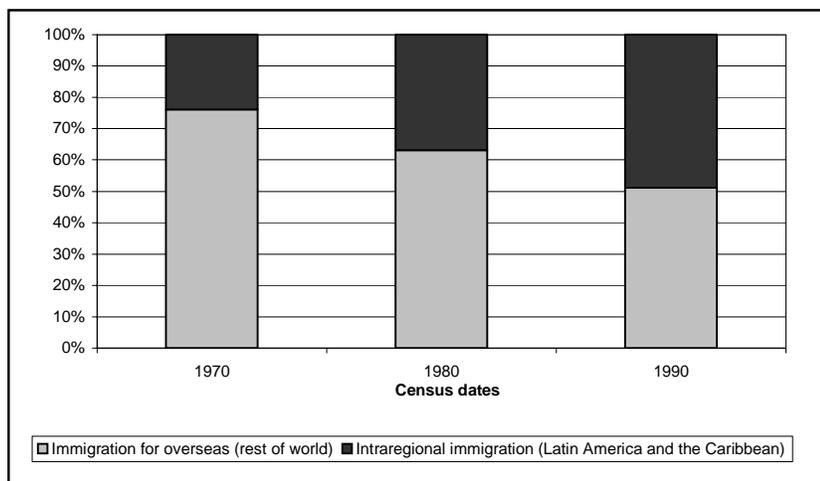
Globalization involved opposing movements: expectations of mobility were becoming widespread, but the restrictions on movement became tighter all the time. The new technologies in the fields of communications and transport facilitated international mobility, and moreover, thanks to better schooling, together with more information on the situation in other countries, there were now many more persons interested in migrating.

The presentation also referred to the *right to migrate* as an option for all those with a minimum of human capital who were not able to materialize their aspirations to social mobility in their countries of origin, whose restrictions on the exercise of economic and social rights ended up undermining the *right to stay*.

For a long time, Latin America and the Caribbean had been a region that attracted migrants. However, during the second half of the 20<sup>th</sup> Century, many people had emigrated from the region. It was estimated that 20 million people from Latin America and the Caribbean were living outside their country of birth. That figure represented just over 13% of the 150 million international migrants throughout the world. Half of the emigrants who had left the region during the 1990s went to the United States. The number of immigrants from Europe had increased between the second half of the 19<sup>th</sup> and the first half of the 20<sup>th</sup> Century: half of the 11 million European immigrants had settled in Argentina and over one third in Brazil. Following the Second World War, a series of economic changes had encouraged the European immigrants to remain in the region.

Within the region, people traveling across borders had its origins in the economic and social history of Latin America and the Caribbean. In the 1970s, there had been a considerable increase of intraregional migration. Socio-political changes combined with ongoing structural factors had resulted in the number of migrants doubling to almost 2 million by 1980. During the 1980s, however, the economic crisis, structural reform programmes and the reestablishment of social order in various countries had resulted in a relatively more modest total of 2.2 million migrants.

**Figure 1**  
**LATIN AMERICA AND THE CARIBBEAN: IMMIGRANT POPULATION BY ORIGIN (1970-1990)**



**Source:** Investigation of International Migration in Latin America (IMILA) from the Latin American and Caribbean Demographic Centre (CELADE).

Despite socioeconomic and political changes, the countries of origin and destination of migrants within Latin America did not change significantly between 1970 and 1990. In 1990, almost two thirds of Latin Americans residing in the region lived in countries other than their country of origin, mainly in Argentina and Venezuela. In Central America, the serious political and social changes and the low level of development between 1970 and 1978 had given rise to significant emigration. Migration between English-speaking Caribbean countries had very specific characteristics in that most of the intense movement of persons was represented by a relatively small proportion of relocations and of recurrent, short-term moves before a return to the home country or as transit points before travelling outside the subregion. In the non-English-speaking Caribbean, one common trend was for Haitians to move to the Dominican Republic, whose production potential had increased with the expansion of the agricultural land area. Those migration flows had gradually become seasonal moves whose length depended on harvest dynamics in the northern and eastern regions of the Dominican Republic.

The destinations of migrants from Latin America and the Caribbean were varied: England, Netherlands, Spain, Italy, Japan and Australia. However, a large proportion of migrants headed to the United States. Migration from Latin America and the Caribbean was seen as a very important social phenomenon for the United States and contributed to the increase in the population that identifies itself as “Latino” or “Hispanic”. According to the United States census of 2000, there were 35.3 million Hispanics, making them the largest minority in the country.

One important repercussion of migration were monetary transfers made by emigrants to their countries of origin. However, it was difficult to assess the actual and potential impact of remittances owing to the varying forms of the transfers, channels of transmission and the ways the money was used. One disadvantage of remittances was the resulting lack of protection and vulnerability of migrants. Human trafficking, undocumented status and deportation were common features of present-day migration. Furthermore, measures adopted to reduce the number of illegal immigrants had proved to be somewhat ineffective.

Protecting the human rights of migrants in the countries of destination was a matter of concern and migration should be included on the international agenda based on the following three main themes: governance of international migration, links with emigrants and prevention of the risks associated with migration.

**(b) *Ricardo Infante*, Latin America and the Caribbean. International migration and the global labour market: background to the decent work agenda**

The second presentation was delivered by Ricardo Infante<sup>2</sup>, who referred to the fact that, during the first wave of globalization between 1870 and 1913, there had been considerable international movement of migrants in what was known as the era of mass migration. It was estimated that around 60 million people had emigrated from Europe, where resources were scarce and the abundant work force moved to New World countries that had resources but a limited labour supply. The countries of origin of these emigrants were England, Germany, France, Spain, Italy, Portugal, Poland, Russia and countries that had been part of the Austro-Hungarian Empire. The main recipient countries were Argentina, Brazil, Canada, United States, Australia and New Zealand.

In Latin America, the main destination country for European migrants was Argentina, which received approximately 7 million people, 4 million of whom subsequently returned to their countries of origin.

The First World War interrupted the process of growing economic interdependence and integration between labour markets that had been achieved during the first wave of globalization. In the United States, such instability had led to the adoption of increasingly restrictive immigration policies, including the introduction of quotas between 1921 and 1924, aimed at reducing the flow of immigrants from Europe. As a result of such measures, migrants had headed for Argentina and Brazil.

In Latin America, migration to Argentina (the main recipient country for foreign migrants) had picked up again in the mid 1940s and continued until the 1950s, when Europe resumed consistent development and the Argentine economy began to weaken, thereby reducing employment and economic opportunities for Argentines and immigrants alike. The main incentives for Europeans to migrate to Latin America had practically disappeared in the 1970s. At present, migratory movements had since been reversed, in that Argentines were currently migrating to Italy.

The United States Immigration and Naturalization Act had been adopted in 1965 and amended in 1986 to reduce illegal immigration by means of stricter border controls and programmes aimed at regularizing the situation of foreign residents. Ten years later, another amendment had been introduced to reduce illegal immigration.

Between 1980 and 1990, there had been an increase in migration from all over the world to the United States. Mexico, Cuba and the Dominican Republic were the main sources of migration during the longer period between 1971 and 1998.

In the 1990s, the European Union had formulated immigration policies at an increasingly extensive supranational level. The main characteristics of such policies were clear distinctions related to the migrants' origins. The European Union had a dual regime under which every citizen of that group of nations had the right to live and work in any member country, whereas people from outside the Union were subject to immigration restrictions.

The economic reasons for emigration included workers' hopes for receiving higher income abroad than in their country of origin. Other reasons for emigrating included wars, racial discrimination and political persecution.

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<sup>2</sup> Representative of the Office of the International Labour Organization (ILO) in Santiago, Chile.

The size and direction of international migration often responded to the following factors, some long-term and others of a cyclical nature:

1. Differences in per capita income or disparities between real wages in the country of origin and the receiving country;
2. The point in the economic cycle and prospects in countries of origin and receiving countries;
3. Friendship and/or family support networks. An empirical study of migratory flows indicated that migrants tended to attribute enormous value to the presence of friends or relatives, as an important factor in selecting the receiving country;
4. Immigration policies in receiving countries that did not encourage migrants' entry did not discourage it completely, to the degree that the possibility of emigrating illegally to some countries always existed;
5. The cost of emigrating. The decision to immigrate involved different costs such as transportation and subsistence in receiving countries;
6. Cultural differences between countries. Language, family relations and traditions affected migration patterns;
7. Geographic distance or proximity. In general, immigration to border countries tended to be greater than immigration to distant countries.

International migration was a mechanism that affected the supply of labour in international labour markets. Emigration reduced the domestic labour supply in the country of origin, giving way for example to contracting demand. It was necessary, therefore, to recognize the balancing effect of migratory processes, to the degree that imbalances in the labour market, which created migratory currents, often brought with them imbalances or turbulence affecting other factors, such as the capital market or agricultural properties, which indirectly affect the labour market. In terms of an analysis of general balance, the correlation between the return on capital, labour and the availability of land played a key role in studying international migration.

The decision whether to emigrate or immigrate did not depend solely on economic considerations but also on political factors. Political regimes based on authoritarian or democratic rule in both originating and receiving countries were also influential. Potential migrants preferred to live in countries where individuals' civil rights and freedoms were respected along with economic rights. One example of such migration was in Argentina between 1960 and 1970, when military regimes had suppressed civil liberties and intervened in universities. That had been followed by the massive migration of professionals and scientists, which had had serious consequences for that country. Similar events had affected Brazil in the 1960s and 1970s and Chile in the 1970s and 1980s.

In the era of globalization, international labour markets were segmented and immigration laws applied by industrial countries to poor and unskilled immigrants were different from those covering foreign professionals, scientists and business people.

The counterpoint to the physical movement of people abroad were the remittances of the product of their labour or profits, which migrants sent home to their countries of origin. The total involved in remittances from 14 Latin American countries in 2001 represented more than 75% of regional GDP (about US\$23 billion). It should be noted that the real amounts involved in remittances could be higher, because they tended to be transmitted along informal channels that made it impossible to calculate them.

How protected labour rights were and access to social benefits and services were closely entwined with the migrant's legal status. Often, illegal migrants worked without contracts and

therefore had no protection from adverse contingencies; they lacked social support networks and tended to be ignored by social welfare services.

Efforts to regularize the labour and social protection conditions affecting migrant workers included the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the United Nations General Assembly in 1990. That instrument recognized and was based on existing ILO conventions, whose purpose was to ensure equality of opportunity and treatment for migrant workers, with no discrimination between these and domestic workers on the basis of nationality, race, religion or sex.

In Latin America and the Caribbean, regional regulations were more related to the human rights field, particularly the American Declaration of the Rights and Duty of Man (1948), of the Organization of American States, along with the American Convention on Human Rights, 1969, both of which condemned discrimination.

The ILO had formulated a Decent Work Agenda that developed and expanded the notion of basic work rights and standards, and laid the foundations for international agreements and national conventions signed by Member States of the Organization.

Sizeable challenges arose from the issues studied, in terms of labour regulations and rights, social protection, participation and representation, which were tremendously important to unskilled migrants.

**(c) *Javier Moctezuma Barragán*, Intergovernmental dialogue and consultation processes on international migration in the Americas**

The third presentation was given by Mr. Javier Moctezuma Barragán<sup>3</sup>, who talked about the history to the Regional Conference on Migration (RCM), also known as the Puebla Process. The last seven years had been spent fine-tuning a work system and objectives. The Plan of Action approved by all member countries was the basic guide that formed the policy framework.

Migration had become a highly important topic at the global level, both in terms of the scale and various effects of the phenomenon. Governments of participating countries had agreed to establish a mechanism for dialogue and consultation for an integral approach to regional migration, recognizing the sovereign right of each nation to protect its borders and apply legislation on migration, establishing common goals and shared responsibility in human rights and trafficking in human beings.

- In 1996, the first meeting had been held in Puebla, Mexico, to lay the foundations for the forum and establish the guidelines for the process.
- The second meeting, held in Panama, in 1997, had made progress in institutionalizing the Conference and approved the Plan of Action, Regional Consultation Group and a Coordinating Committee.
- At the third meeting in Canada in 1998, the Viceministers had examined the scope of the first tasks conferred upon the Regional Consultation Group and three seminars on Combating Illegal Migrant Trafficking, migration policy and human rights and migration and development.
- The fourth meeting had been held in El Salvador in 1999, at a time of concern for the after-effects of Hurricane Mitch and its links to the theme of migration. That natural disaster had highlighted the need for a comprehensive approach to migration. The meeting had requested the International Organization for Migration (IOM) to propose a

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<sup>3</sup> Undersecretary for Population, Migration and Religious Affairs in the Mexican Ministry of the Interior.

general program of cooperation for the return of extra-regional migrants (with respect for human rights) and also established the Virtual Secretariat.

- The fifth meeting had taken place in Washington DC in 2000 when participants had agreed on a consolidation of a sustainable vision on the future of the RCM, based on the principles of dignity, responsibility, and security, when addressing the migratory phenomenon.
- In 2001, the sixth meeting had been held in Costa Rica, where participants had agreed to institutionalize the Presidency Pro-Tempore and create a Technical Support Unit, and had urged member countries to adopt the document entitled Framework for the Implementation of the General Program of Cooperation of the RCM for the Return of Extra-regional Migrants, in accordance with respect for human rights.
- The seventh meeting, held in Guatemala in 2002, had included discussions on the complexity of migration following the terrorist attacks of the 11<sup>th</sup> of September 2001. Participants had pointed to the challenge of maintaining borders open to trade, movement of persons and exchanges connected with globalization while guaranteeing border security, efficiently combating all forms of organized crime and supporting the validity of the comprehensive approach of the Puebla Process and the differentiation between migration and terrorism.

In summary, the main areas of concern of the RCM were:

- Ensuring that the human rights of migrants were respected, and that they were protected from discrimination, violence and xenophobia.
- Guiding efforts to improve the conditions of migrant women and girls, who were often the victims of trafficking in women and exploitation.
- Directing its attention to refugees and asylum seekers.
- Increasing efforts to combat trafficking in human beings.
- Strengthening consensus through other similar regional and governmental processes and links with other bodies.

In conclusion, mobility was a reality. Irregular or undocumented migration still occurred despite the serious, and even fatal, risks involved due to the lack of safe and legal channels. It was therefore essential to work in that direction and implement the relevant recommendations.

## 2. Comments

During the round of comments, Mr. Alfonso Morales Suárez<sup>4</sup> pointed out that public policy on migration should be based on an integral perspective and should be planned multilaterally in the short, medium and long term. He emphasized the importance of shared responsibility and stressed that the role of governments was not to encourage or restrict migration but to control and regulate such movements to ensure respect for human rights.

He put forward creative solutions for reducing the development gap. Cheap labour in the form of migrants arriving in developed countries could be used to pardon a debt box, encourage production projects or comply more rigorously with certain clauses of trade agreements. He also pleaded in favour of linking migratory processes to national and international development strategies.

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<sup>4</sup> Assistant Director-General of Support for Ecuadorians Abroad, Ministry of Foreign Affairs (Ecuador).

The next speaker to take the floor was Mr. Rolando Franco<sup>5</sup>, who, speaking in a personal capacity, pointed out that the documents presented referred to a currently fashionable notion about the stages of globalization that enabled its effects to be linked with the characteristics of migration

He stated that the conditions during the first phase had not been as liberal as claimed and that migration had not previously been “mass” migration, any more than it was restricted at the present time. With what was supposedly “restricted” migration, the planet currently had 150 million migrants.

He said that numerous studies indicated that developed countries needed migrants to maintain their economic power. However, he also underlined that they were not necessarily obliged to accept indiscriminate immigration. He was of the opinion that the entry quotas set by recipient countries had been extremely changeable and that the current wave of migration was not affected by ethnic prejudice. At the end of the third phase of globalization, it would be interesting to see how many people had moved. If the number of migrants continued to grow and the predictions of demographic renewal in central countries proved to be correct, labour mobility could be assumed to be higher.

The ILO study offered a model to explain migration. One of the non-economic reasons given is that people preferred to live in countries where civil liberties and individual rights were respected. Potential migrants therefore took account of such a significant detail when deciding whether to migrate or when choosing a destination.

It was fundamental for people to be able to choose whether to stay in their country. That right has often been violated throughout history, and many countries continued to violate it on the basis of “reasons” that were clearly unacceptable.

He concluded by saying that people tended to consider migrants as part of a compact and homogenous group.

### **3. Highlights of the unit**

- The modern world and the current phase of globalization formed the background to intense processes of human mobility, the dynamics and repercussions of which were inseparable from development processes and, in particular, the huge disparities between countries. Industrialized nations had benefited from a qualified and non-qualified workforce that had played a fundamental role in generating and increasing their wealth. The main paradoxes of globalization were the growing barriers to the free movement of persons that were not as obvious at other times during history.
- Migration policies in countries of destination and origin lacked an integral and sustainable vision for the short, medium and long term. Such a lack of perspective made it impossible to transcend rigid and dichotomic approaches of encouraging or restricting migration in order to move towards controlled and regulated processes that respected human dignity and human rights, particularly those that enabled them to stay in their communities of origin or move in search of better living conditions.
- During the 20<sup>th</sup> Century, international migration in Latin America and the Caribbean had undergone significant changes associated with crises and structural factors that were mainly of a political, economic and ethnic nature. The fact that the United States has been confirmed as the preferred destination for migrants from the region made it necessary to evaluate the consequences for the places of settlement, communities of origin, the migrants themselves and the dynamics of the migrants’ links with those communities.

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<sup>5</sup> Director of the ECLAC Social Development Division.

- The volume of remittances recorded had made them increasingly important, and that had a significant effect on the economies of the migrants' countries of origin. As a result of their various potential effects on families, areas and entire countries and regions, the relative importance taken on by remittances in some economies had attracted the attention of governments, national and international financial institutions and the societies involved in general. However, the actual and potential impact of remittances still remained to be assessed, and the counterpoint was the lack of protection and vulnerability of the migrants who sent their savings home.
- Emigration of qualified workers was an important regional phenomenon that continued to harm those countries most affected, especially those with the most limited technical and scientific capacity. One way of facing such losses was to retain links with emigrants.
- A growing proportion of migratory movement in the region was undocumented. The fact that those forced to be illegal immigrants were vulnerable and exposed to risk made it extremely difficult to apply and protect their basic rights.
- Initiatives to establish a comprehensive legal framework within international law to protect the rights of migrant workers and their families had not been adequately reached States or been sufficiently adopted. Although there were many regional and global conventions and declarations, for various reasons they were either not in force or did not constitute binding or positive instruments.
- An important step in that direction was regional cooperation between governments and between governments and organized civil society. One valuable example within the region is RCM, whose seven-year history included some important achievements in terms of the exchange of experiences and cooperation in the management of international migration. The RCM Plan of Action was an interesting point of reference, especially because its concerns included respect for human rights and attempts to identify migrant protection mechanisms. The RCM sought to ensure that its efforts complemented other regional processes and the work of civil society. Objectively speaking, it had to be acknowledged that much work remained to be done by the governments that made up the forum.



## **B. Human rights of migrants**

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### **Unit I. Human rights and mobility**

*“Within the framework of human rights, there is a hierarchy of beneficiaries: citizens who enjoy full rights; migrants established legally within the territory of the State and migrants whose situation is irregular and who are more exposed to situations of abuse or discrimination”.*

**Moderator:** Pedro Pablo Villanueva, Representative of the United Nations Population Fund (UNFPA), Bolivia.

#### **1. Speakers**

##### **(a) Américo Incalcaterra, Mobility and human rights**

The first paper was presented by Mr. Américo Incalcaterra<sup>6</sup>, who referred to the freedom and equality of all human beings, as guaranteed by the Universal Declaration of Human Rights. However, although most countries had abolished slavery, there still existed behaviours and practices that failed to respect the dignity and equality of persons. Those practices were due to poverty, social exclusion, ignorance, armed conflicts and discrimination, which had been dubbed contemporary forms of slavery. That issue was of concern to the United Nations, which had formed a working group to study the problem. In various reports, the group studied issues relating to the trafficking in persons, exploitation of prostitution, child labour, labour

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<sup>6</sup> Representative of the Office of the United Nations High Commissioner for Human Rights in Colombia.

servitude, sexual exploitation of children, sexual violence in times of war and the new form of improper use of the Internet for sexual exploitation, which had been included among those new forms of slavery.

On the basis of those documents, the working group had made two recommendations: (a) that the United Nations specialized agencies in charge of the specific aspects of the matter should coordinate their activities with the group in order to achieve an integrated approach to the problems that arise; and (b) that effective measures should be adopted to protect the rights of the victims of the oppressive situations referred to above, taking advantage of the knowledge and experiences of the different United Nations agencies and bodies.

According to the presenter, there were several groups vulnerable to exploitation, among them migrants, above all international migrants or those who were forced to flee their country because of armed conflicts. Of those, women, children and some ethnic or religious minorities as well as undocumented emigrants were the most vulnerable mainly because the freedom of movement and the principles of equality and dignity of persons as an integral part of human rights were subject to special interpretations in the case of persons who migrated to other countries and who, as foreigners, had to deal with a redefinition of their rights.

Therefore, in August 2001, the International Labour Organization (ILO), the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Human Rights (UNHCHR) jointly prepared a report on international migration, racism and xenophobia in which they urge countries to ratify the conventions on migrants, especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>7</sup>

Lastly, the author concluded that the issue of the vulnerability of migrants posed challenges for States and peoples in terms of human rights; for example: (a) achieving a balance between the fight against terrorism as part of the national security of States and the fundamental freedoms of human beings, whatever their status in terms of migration; (b) preventing the causes of insecurity and violence demonstrated in the domination of, discrimination against and contempt of other persons; and (c) protecting individuals and groups against exploitation, discrimination, xenophobia and other forms of intolerance that are an affront to human dignity.

#### **(b) Richard Perruchoud, Migration and human rights**

Mr. Richard Perruchoud<sup>8</sup> began by saying that any discussion on migration and human rights implied finding a balance between the sovereignty of the State and the duties that the State had towards migrants in the framework of international human rights norms. He identified two main issues: (a) the rights of migrants *vis-à-vis* the State, paying special attention to migrants in an irregular situation; and (b) the power of States to direct migration on their territory and to control the way that that prerogative was dealt with under international law in terms of human rights.

With respect to the human rights of migrants, Mr. Perruchoud pointed out that although the universal human rights instruments provided that every State must respect them and guarantee them for any person on its territory, irrespective of his/her legal status, in practice, migrants faced a series of constraints in the enjoyment of their rights. Those rights were inalienable but not absolute, since States had a margin of appreciation or discretion to determine whether any and, if so, which restrictions were applicable. Various international human rights instruments even established a distinction, in some cases, between the rights conferred on migrants who were legally residing in a country as distinct from those whose status was irregular. Thus, within the framework of human rights, a hierarchy of beneficiaries was established: citizens who enjoyed full rights; migrants

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<sup>7</sup> Note by editors: In March 2003, Guatemala and El Salvador ratified the Convention and deposited their respective instruments, as a result of which the Convention entered into force on 1 July 2003.

<sup>8</sup> Executive Officer/Legal Adviser of IOM.

established legally in the territory of the State; and migrants whose status was irregular, who were the most vulnerable to situations of abuse or discrimination. In order to prevent the above and extend the same rights both to regular and irregular migrants, the author recommended that States should ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>9</sup>

Mr. Perruchoud stated that another issue that infringed the human rights of migrants was trafficking in persons. In that regard, he indicated that his organization was also promoting the ratification of the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

In his view, a third problem affecting the human rights of migrants was the growing gap between current law and practice. That is, there was no need for any new instrument, but rather what was needed was the joint will of States to fulfil their international commitments, to remind the migrants themselves that they had rights, but also obligations in the countries that received them, as well as to ensure decent living conditions for the nationals of the countries and offer potential migrants the option of emigrating or remaining in their country of origin.

The presenter stated that the power of States to direct migration on their territory was based on the concept of State sovereignty, which, in the case of migration, was understood to be the power of the State to determine which non-nationals it would admit into its territory, to expel foreigners in some circumstances, to control its borders and to adopt the necessary measures for protecting the security of its territory. However, States were subject to some restrictions which applied for migrants in any legal status: the case of refugees, the “superior interest of the child” or the right of a family to remain together among others. For a migrant legally situated in a territory, the guarantees were greater, since he/she had the right to have his/her case examined before being expelled. Notwithstanding those international protections for the migrant, the author pointed out that expulsions continued to take place irrespective of the restrictions imposed on the State authorities by international law in terms of expulsion.

Similarly, the practice since the events of the 11<sup>th</sup> of September 2001 suggests that there is little reluctance to invoke national security at the time of using the power to elude obligations in terms of human rights. And that, according to the presenter, had been the great risk in the field of migration since that time; suddenly, migrants had become the subject of greater suspicion than before, since they were often asylum-seekers, refugees or persons whose motives were economic; all of them were being treated, unjustly, as potential enemies, and actions were justified that had the potential to discriminate against them or to limit the enjoyment of their rights. In short, international terrorism was often considered as a migration issue.

In fact, sovereignty implied a dual responsibility: externally, with respect to the sovereignty of other States, and internally, with respect to the dignity and basic rights of all persons within the territory, whether nationals or migrants. However, currently, there was a contradictory reaction in the way the problem was perceived: on the one hand, there was a growing demand from the United Nations, various non-governmental organizations (NGOs) and the media for regulations to protect the human rights of migrants; and on the other, there was an attempt to brush aside the matter discreetly, on the basis of arguments of national sovereignty and States’ efforts to fight terrorism.

The presenter concluded that the main challenge would be to find a point of equilibrium between respect for the rights of migrants and concerns for national sovereignty, which would be reflected in a coherent migration policy, whether at the national or the regional level, which would be separate from, but would at the same time complement, the fight against terrorism.

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<sup>9</sup> See footnote 7.

**(c) Agni Castro-Pita, Human rights, refuge and asylum**

Mr. Agni Castro-Pita<sup>10</sup> explained that the issue of refugees had to be examined in the context of a globalized world, in which goods and capital circulated freely while the movement of persons was more restricted in particular those from more vulnerable strata, who included refugees and asylum-seekers. States were showing a growing interest in adopting migration control mechanisms together with restrictive practices relating to asylum and the implementation of migration policies without due safeguards for the victims of persecution. It was assumed that foreign asylum-seekers and refugees entering national territories were migrants unless proven otherwise. Thus, the representative for South America of the United Nations High Commissioner for Refugees (UNHCR) indicated that refugees shared with migrants their forms of travel, the access routes, could be victims of the same networks of smugglers and were equally vulnerable in their fundamental rights. However, the difference lay in that refugees were victims of forced migration to safeguard their life, security or freedom in the face of a situation of persecution, armed conflict and massive violations of human rights.

According to Mr. Castro-Pita, it was in the context of human rights that the issue of migration and that of refugees were connected. International law, as it applied to refugees stemmed from—and complemented—international law on human rights and humanitarian law. The speaker referred to three aspects of human rights: as a *causal nexus*, because the violation of human rights was the fundamental reason why refugees were obliged to leave their country of origin and seek asylum; as *subjects*, because they were persons who also deserved to enjoy fundamental rights irrespective of their legal status; and as *solutions*, because such human rights violations were also the main obstacle to ensuring a safe and proper return to their countries and, therefore, were what prevented the search for lasting solutions.

Therefore, respect for and the effective exercise of human rights in the countries of origin constituted the best way of preventing forced movements of persons. As that did not occur, however, the presenter listed several international instruments which guaranteed the right of asylum, for example, the Universal Declaration of Human Rights, the 1951 Geneva Convention relating to the Status of Refugees and its Protocol of 1967; for Latin America, the Cartagena Declaration on Refugees dated 1984 and the San José Declaration on Refugees and Displaced Persons of 1994 and also the International Conference on Central American Refugees (CIREFCA) for the Central American region. For Mr. Castro-Pita, the principle of non-refoulement was the basis for the international protection of refugees.

Until the decade of the 1990s, UNHCR had striven to differentiate between refugees and other types of migrants as a means of emphasizing the status and specific needs for protection of its beneficiaries. However, the particular characteristics of the mixed migratory flows made it increasingly difficult to distinguish between refugees and other migrants; which had made it hard to identify and protect those persons who were the victims of persecution. The events of the 11<sup>th</sup> of September 2001 had made matters worse. Thus, UNHCR was concerned with two issues: (1) that the bona fide asylum-seeker might once again become a victim as a result of public prejudice and unduly restrictive administrative or legislative measures; and (2) that the rules for protection of refugees, which had been carefully established would be eroded, thus weakening the basic principles of protection, in particular the principle of *non-refoulement*.

According to the representative of UNHCR, the agency was also concerned that authorities, in response to the increase in irregular migration movements, had gradually raised barriers to migration without realizing that their response promoted smuggling of migrants, which had also had a negative impact on the efficiency of the systems of asylum and protection of refugees.

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<sup>10</sup> Representative of the Regional Office for South America of the United Nations High Commissioner for Refugees (UNHCR).

The main challenge to UNHCR was to preserve the institution of asylum and, at the same time, to seek to ensure that States struck a balance between asylum-seekers' and refugees' need for protection and the States' own legitimate interest in preventing the undue or abusive use their asylum procedures. It was important that the special procedures or "complementary forms of protection" ("humanitarian statute", "subsidiary protection", "alternative statutes" or "special residence permits") were just that, complementary forms and that they did not replace the basic rights of refugees to international protection.

UNHCR also gave priority to helping to combat the smuggling of migrants and trafficking in persons by promoting the signing of world agreements, such as the United Nations Protocols to the United Nations Convention against Transnational Organized Crime of 2000 and, at the regional level, the Asunción declaration on smuggling of persons and smuggling of migrants in the year 2001 within the framework of MERCOSUR. UNHCR had commended MERCOSUR for including in its instruments safeguard clauses designed to guarantee the rights of asylum-seekers and refugees in accordance with the 1951 Convention and 1967 Protocol.

In conclusion, the speaker pointed out that whereas UNHCR could play only a limited role in reducing the causes of irregular migrations, it could do more to prevent movements triggered by human rights violations through concrete measures, such as: advocating the elimination of the causes that give rise to forced movements; stimulating early warning and rapid reaction actions to emergency situations that generate refugees; channelling international humanitarian assistance to reduce the causes of refugee crises; and promoting safe and orderly repatriation in follow-up to peace and reconciliation processes in the countries of origin.

#### **(d) Kelly Ryan, Human rights, migration and regional security**

The fourth speaker was Ms. Kelly Ryan.<sup>11</sup> In her presentation, she first pointed to the convergence between the objectives of the Hemispheric Conference and those embodied in the Quebec Declaration in promoting a plan of action to strengthen regional and bilateral governmental cooperation on migration issues through the following:

- Establishing an Inter-American programme with OAS for the promotion and protection of the human rights of migrants and members of their families;
- Promoting the exchange of information in the hemisphere on trafficking networks.
- Developing information campaigns on the issue.

The Government of the United States had made efforts at the national level through the Trafficking Victims' Protection Act of 2000. The Act required the Department of State to present an annual report on the state of trafficking in persons in the world and on efforts by Governments to combat that scourge. The Act created the "T visa" which provided protection to the victims of trafficking who cooperated with authorities against those responsible for their condition. That visa could also be granted to permit those victims who would be harmed if they returned to their countries of origin to remain in the United States.

For the United States, it was interesting to consider that most of the migration in the world occurred through its borders. Only 3% of the world population resided in a country other than its country of origin. The United Nations estimated that in the last twenty-five years, the migrant population living outside of their native countries had doubled and stood at close to 175 million people, of whom approximately one quarter lived in North America. The United States Bureau of the Census estimated that in 2000, 10% of the population of that country—approximately 28 million persons—were born abroad and that of that percentage, half was from Latin America.

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<sup>11</sup> Deputy Assistant-Secretary of State, Bureau of Population, Refugees and Migration in the United States Department of State.

For the reasons outlined above, Ms. Ryan recognized that the United States viewed migration as positive and considered that the issue of immigration served their national interest. However, since the 11<sup>th</sup> of September 2001, that country was caught up in a debate: How could it reconcile openness towards immigrants with the fundamental need to protect themselves against the new threat to their national security? While that controversy was being resolved, the State Department official gave her assurances that her Government would continue to provide protection and refuge to all those in need; however, for security reasons, she stressed the importance of orderly migration. The challenge was to close borders to illegal migrants, smugglers of persons, traffickers in persons and at the same time keep them open to legitimate flows, including persons in need of protection. The illegal movement of persons could be considered a threat to national and international security, in addition to placing the migrants themselves in a vulnerable situation.

Ms. Ryan said that migrant women were particularly vulnerable to discrimination, abuses and other crimes. In designing just policies on human development and migration, authorities should pay special attention to the situation of women and children. The Quebec Plan of Action promoted the human rights of women and gender equality, since it underscored the existence of serious gaps in the legal protection of women in conflict zones around the world and highlighted the need to include in a comprehensive way training activities to help women to develop skills.

Another issue of concern to the presenter was the increase in the migration of street children, since they were easy prey to networks of smugglers or traffickers in persons. In order to combat the smuggling of children to the United States, her country had undertaken a special campaign against those networks.

In short, for Ms. Ryan, it was indispensable to establish best practices and policies; for that purpose, she advocated using the existing mechanisms of ECLAC, OAS, the Regional Conference on Migration (RCM), the Summit of the Americas and the South American Conference on Migration (Conferencia Sudamericana sobre Migraciones, CSM), as well as forums on migration and trafficking in persons.

## 2. Comments

The first commentator of this panel was Mr. Carlos Orlando.<sup>12</sup> He said that migration was the basis of civilization; he also pointed to the similarity of arguments put forward in the four papers presented on the two issues that were being compared. On the one hand, the rights of migrants, the causes of economic migration and the reasons for protecting asylum seekers and refugees; and, on the other hand, the sovereignty of the State and the equilibrium that there should be on the two issues. He also referred to the distinction to be made between terrorism and migration and between migrants and refugees. He pointed out that terrorists were criminals; refugees, on the other hand, were forced to leave their country to save their life and their integrity. Migrants did not fit into either of those categories, that is, they were not criminals and their reasons for migrating were different from those of refugees. To combat such prejudices, it was important to educate people, to explain the benefits of migration and to inculcate respect for migrants.

The second commentator was Ms. Ann Jordan,<sup>13</sup> who began by asking the questions: Why is it so difficult to migrate safely? and Why do citizens of a State and legal migrants enjoy full rights and undocumented persons so few rights? She pointed out that when one spoke of sovereignty of States, there should be a balance between border control and human rights; indeed, the rapid deportation of undocumented workers, without compensations and without access to justice caused a number of problems and ruled out any analysis of violations of human rights. In turn, immediate

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<sup>12</sup> Director General for International Cooperation of the Ministry of Foreign Affairs, Uruguay.

<sup>13</sup> Director of the Initiative Against Trafficking in Persons of the International Human Rights Law Group, United States.

deportation made it difficult to detain and process smugglers, who, for that reason, would continue to engage in unlawful practices without being prosecuted.

She added that safe migration must be documented; however, if States closed their borders, it produced a negative effect on human rights, because smuggling of persons increased. In fact, smugglers became traffickers, because the risk was greater and the debts of the persons affected increased. She asked why controlled migration was not permitted, given the actual and potential demand for workers. Lastly, she stressed the need to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,<sup>14</sup> as well as the United Nations Convention against Transnational Organized Crime and its respective Protocols.<sup>15</sup>

### 3. Highlights of the unit

- There is a constant tension between the sovereign right of States to direct migration in their territory and the exercise of the fundamental rights of migrants. This represents the challenge to achieve an equilibrium between the safeguard of sovereignty and respect for the human rights of migrants.
- International law instruments created by the community of nations for protecting the rights of migrants are well-known and sufficient. However, apparently, they have not yet been translated into norms for generalized application in recipient and transit countries and nor is there any evidence of action for ensuring that the exercise of such rights becomes a current and generalized practice.
- An appropriate review of this legal system would be an important step towards eliminating discriminatory mechanisms which establish hierarchies or categories of persons with differentiated rights and which end up restricting the enjoyment of migrants' rights. The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is the most appropriate instrument for dealing with that situation.
- The prevalence of situations of conflict and violence in countries in the region is a call for attention to strengthen provisions for protection and assistance to potential refugees and asylum-seekers. One of the guarantees that must be provided is the observance of the fundamental principle of "non-refoulement", which is frequently at risk when migration policies are tightened up.
- The dimensions that international migration has acquired for labour purposes in the world today should not overshadow the importance of the system of protection or of the responsibilities of States and the international community as a whole to guarantee the humanitarian nature of refuge and asylum. A predominant place should be assigned to the effective exercise of human rights for persons who suffer persecution or who risk their lives, since it is precisely their lack that is at the origin of the request for asylum.
- The groups of migrant and refugee populations require special programmes for attention to vulnerable groups, including women, children, families, disabled persons, undocumented persons and some ethnic and religious minorities. This priority is even more important insofar as it constitutes an essential recourse for preventing possible discriminatory practices arising from postures of intolerance, domination, exploitation, xenophobia and racism.

<sup>14</sup> See note 7.

<sup>15</sup> The Protocols referred to, also known as the Palermo Protocols, are: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

- Migrant and especially undocumented populations are easy prey to abuse of their essential rights and are often victims of situations of exploitation which amount to modern forms of slavery which ride roughshod over the dignity of the human condition; these include the forcible recruitment of children under different forms of forced labour. Trafficking in persons places the lives of such persons at risk, subjects them to abhorrent practices and coercion for gain.
- The recent global context has promoted the adoption of restrictive and controlling policies, encouraged by factors of violence, such as terrorist aggression and threats to the national security of States. These practices must not be allowed to jeopardize the guarantee of the full exercise of the rights and the proper treatment of persons without distinction of any kind. Moreover, it has been pointed out that the increase of barriers to the entry and mobility of persons in national territories encourages smuggling and trafficking in persons.
- States must formulate and adopt migration policies that reconcile their obligation to regulate migratory flows into their respective territories on the basis of their development processes with the need to extend a decent and humane treatment to persons travelling from one country to another.
- A proper distinction must be made between the characteristics of migrant workers or refugees and persons, such as terrorists, drug-traffickers and traffickers in persons who commit criminal acts. This distinction is fundamental to avoid stigmatizing migrants and punishing the victims rather than the criminals.

## **Unit II. Gender and age considerations relating to the human rights of migrants**

*“The most vulnerable part of the population consists of women, adolescents and children, throughout the processes of recruitment, transfer and transit over the border and arrival in the destination country.”*

**Moderator:** Sonia Montaña, Chief, ECLAC Women and Development Unit.

### **1. Speakers**

#### **(a) Alfredo Missair, Human rights of migrant children and the children of migrants**

The presentation “Umaking a future: migrations, a triple violation of human rights”, was given by Alfredo Missair.<sup>16</sup> He said that his organization, the United Nations Children’s Fund (UNICEF), was keen to be involved in joint efforts to research the impact of migrations, particularly on the development of children. He highlighted three necessities in this regard:

1. To address the issue within the framework of the human rights instruments, which enshrine the basic principles in this regard;
2. To bring violations of the rights of children and the families of migrants into the open;
3. To propose actions to guarantee the rights of migrants.

The existing human rights instruments supported the protection of the rights of children, whether migrants, displaced or refugees, in the form of the Convention on the Rights of Child

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<sup>16</sup> Deputy Regional Director for Latin America and the Caribbean of the United Nations Children’s Fund (UNICEF).

(CRC), which had been adopted by the United Nations General Assembly in 1989. This Convention was the international legal framework that should serve as a basis to develop policies and legal instruments geared towards achieving the effective protection of children's rights and overcoming all the forms of discrimination based on nationality, ethnic origin or social condition commonly suffered by children and adolescents who were forced to leave their native country.

A series of international declarations had been made in the wake of CRC, including: the commitments undertaken at the 1990 World Summit for Children; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts of 2000, and the special session of the United Nations General Assembly of 2002.

The speaker said that minors who migrated with their families represented an estimated 20% of all migrants. To this figure it was necessary to add an undocumented number of under-18s who migrated alone, either voluntarily or under duress through kidnappings, trafficking in persons or sales or illegal adoptions.

In addition, minors who remained in their home countries in dispersed families were also participants in the migratory process. As well, a very significant number were born as children of migrants. Minors who had either migrated or been born as children of migrants, could also become part of inverse repatriation processes, whether assisted, forced, or even deported under extreme conditions.

According to UNICEF, public and individual health was affected not only by the root causes of migration —poverty, hunger, wars, natural phenomena— but also by the subhuman conditions in which children travelled, including overcrowding, lack of food and climate changes. Accidents and acts of repression also occurred, sometimes resulting in serious physical injury or even death. To all these health risks was added the danger of contracting HIV/AIDS. Another serious impact was caused by the interruption of programmes of vaccination and the education of migrant children. Once their education was interrupted, it was difficult to recoup the learning time they had lost.

UNICEF considered the following measures a priority:

- Insist that priority be afforded to children and adolescents when social investment is determined in each country, and emphasize the importance of bilateral and regional agreements.
- Create a greater awareness and raise the profile of the serious rights violations that cause children and their families to migrate, and develop programmes of prevention, protection and integrated assistance for migrants and their families.
- Take concrete steps to protect children's rights by signing the universal, regional or bilateral legal instruments.
- Respect the international rights of refugees and promote measures to help protect the rights of children and adolescents forced to seek refuge in countries that border with nations involved in conflicts.
- Promote agreements to regularize, legislate on and protect the rights of migrant children and adolescents.
- Promote the universalization of civil registry systems and children's right to an identity, and improve the statistical systems in the region in order to obtain reliable information.

- Standardize legislation and establish international cooperation mechanisms to sanction and curb the crimes of trafficking in persons and sexual, commercial or labour exploitation.
- Develop concerted policies of integrated assistance for children and adolescents in situations of forced migration or forced family separation.
- Lastly, it is important to insist upon respect for the rights of all children and adolescents, irrespective of their condition or location.

**(b) *Luis Mora*, The frontiers of vulnerability: gender, migration and sexual and reproductive rights**

Luis Mora<sup>17</sup> referred to processes of international migration in Latin America and the Caribbean from the perspective of gender and human rights, specifically the sexual and reproductive rights of migrant, refugee, displaced and trafficked populations.

Women, adolescents and children were the most vulnerable members of the population involved in processes of recruitment, transfer, transit over borders and arrival in destination countries. Women were at constant risk of different sorts of violence, especially sexual violence; as well as from the impossibility of negotiating safe sex; unwanted pregnancy; transmission of STDs, especially HIV/AIDS; prostitution as the only means of gaining a place in the labour market; and even death.

The sexual and reproductive rights of migrant, refugee and displaced populations were enshrined in international law in the form of general international human rights law, humanitarian law, refugee law and other consensus-based international instruments and, in particular, the Cairo Programme of Action and the Beijing Platform.

Among the most significant international agreements on the protection of this type of rights among migrant, refugee and displaced populations, the speaker highlighted: the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention on the Rights of the Child (CRC, 1989), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

The decade of the 1970s had seen the development of the first theoretical precepts on gender and migration. These models served to incorporate sex as a variable of analysis and the sexual division of labour to document the diversity of female activities and the subordination of women in the economic sphere, and to achieve the progressive recognition of autonomous female participation in population flows driven by economic factors.

In the 1990s a new proposal for the analysis of migrations made the gender variable a central theoretical concept and a prime factor in determining the structure of migratory movements. This resulted in the development of an analytical approach based on the recognition that ideologies, hierarchies and gender relations influence men's and women's probabilities of migration in a differentiated manner.

The speaker mentioned that, in Latin America and the Caribbean, a number of studies conducted from this perspective had thrown light on the determining role of gender relations in the interpretation and complexity of migrations, especially on the way that women's subordination and dependence were involved in the organization of territorial mobility.

The impact of the gender composition of migratory processes on family structure and dynamics had targeted aspects such as the incidence of male migration and the formation of

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<sup>17</sup> Presentation by Luis Mora, Expert with the Technical Support Staff of the United Nations Population Fund (UNFPA), México.

different types of households (female-headed, nuclear families, incomplete families or extended households). In this regard, certain studies had shown that migration can alter the balance of the marriage market and alter average age at marriage.

Female members of migrant men's families who remained in their places of origin saw their domestic function and responsibilities change, often meaning an increase in their workload both in and outside the home. In some cases this had induced collective negotiations to secure inputs or credits, and participation in the defence of property and in political activities. These responsibilities had not elevated women's status, however, or strengthened their decision-making power within the family and community spheres, since they tended to remain under the supervision of their relatives, especially younger women.

The speaker also mentioned the dangers faced by migrants. Crossing the border could constitute a risk, or even a threat of death, especially in situations of undocumented migration, forced displacement or trafficking in persons.

Research conducted on Mexico's southern border found that during their journey 70% of migrants suffered some kind of violence, and 60% some type of sexual abuse, from sexual coercion to rape. An additional source of vulnerability for women lay in the need, in certain circumstances, to engage in temporary or permanent sexual work, seriously risking their health and physical integrity. However, in the region there was evidence of a gradual social acceptance of prostitution as a form of paid work for women, and since the mid 1980s work in the sex trade had increased as one of the main labour options open to migrant women.

Given the causes of female migration, and the differences in men's and women's social construction of migration, men cited economic factors as the main reason for displacement, while women tended to cite marriage and the family.

In Latin America and the Caribbean, research conducted in seven countries and Puerto Rico found that a third or more of the women questioned were motivated mainly by the need to seek work or improve their labour situation, compared to half the men. Among single women with or without children, economic decisions weighed the most heavily, while among married women the family or joint decision associated with the potential economic benefits for the husband prevailed. Also, among single women with or without children the predominance of economic motivations had to be viewed against a background of rurality and agrarian systems characterized by a sharp division of labour, which placed extreme constraints on the opportunities of young and mature women alike.

In this context, the families themselves either encouraged or did not impede the migration of their female members, believing that they would find better work opportunities in the city, often as domestic employees, and would possibly remit more money to the family than its male members.

The link between extreme poverty and migration, migrants' scant knowledge of the legal channels for migration and the risks involved in undocumented migration, meant that certain populations were particularly vulnerable to falling victim to networks of migrant traffickers.

In the 1980s, the armed conflicts that had broken out in Central America had triggered the forced displacement of over a million people in Guatemala, El Salvador and Honduras. The restoration of peace and disbanding of guerrilla groups radically altered this scenario at the end of the 1990s. It was estimated that 250,000 were still displaced in Guatemala (2001) and 60,000 in Peru. At the present, Latin America and the Caribbean alone accounted for 10% of the world's displaced people (some 2 to 2.5 million of a total of 20 to 25 million).

The speaker dwelt on the characteristics and composition of internal and international displacements in Latin America, which differed from other areas of conflict in the world, such as sub-Saharan Africa, Eastern Europe or Asia, where civil wars had generally triggered the

displacement of ethnic minorities seeking political independence. In Latin America, it was much more common to find the expulsion of poor rural majorities (El Salvador, Honduras and Colombia) and large proportions of indigenous peoples, who faced severe discrimination in their places of arrival.

In most of the countries, statistics to ascertain the dimensions of trafficking in persons were lacking. With regard to the routes used by bands involved in trafficking, the Report on the Trafficking of Women and Children for Sexual Exploitation in the Americas (2002) found that trafficking corridors extended from Nicaragua to Honduras, El Salvador, Guatemala and Belize.

The data available suggested that while not all traffickers were associated with organized crime groups, such groups appeared to be increasingly involved in trafficking. At present, according to OAS, in Latin America and the Caribbean there were over two million sexually exploited children and adolescents.

The International Conference on Population and Development (ICPD), held in Cairo in 1994, had been the first forum to substantively address the issue of migrant, refugee, displaced and trafficked women from a perspective of fundamental human rights for sexual and reproductive health, access to services and a life free from all types of violence directed against them.

In Latin America and the Caribbean, UNFPA had made headway in working with highly mobile populations considered to be at risk of contagion from STDs, including HIV/AIDS. The purpose of this work was to improve the sexual and reproductive health of adolescents, women and men, through exercise of the right to information, education and reproductive health services.

**(c) Patrick Taran, Labour and migration: protection is paramount**

This presentation was given by Patrick Taran.<sup>18</sup> He explained that demand for migrant labour in developed countries is not declining. The increase in international labour mobility meant that globalization and trade liberalization had contradictory impacts on the conditions of employment in destination countries, since levels of exploitation and deregulation were also on the rise. In many countries migration was both encouraged and suppressed. Migrant workers represented an inexhaustible source of cheap labour and, despite stronger controls, irregular channels were the only option open to them. This encouraged trafficking and left migrants unable to defend their dignity and labour conditions.

Discrimination against migrants—including the gender dimension—took the form of hostility towards foreigners, despite the fact that all societies were becoming increasingly multicultural and mixed in terms of religion. Demand for female workers was concentrated in sectors that were typically little regulated, such as domestic employment and the sex industry, thus exposing them to the worst forms of abuse.

The speaker highlighted five elements that were essential to arrive at a more rational situation with regard to migration: (a) an informed and transparent system of admission of labour migration; (b) an approach to migration management based on legal principles; (c) the enforcement of minimum standards of conditions of employment at the national level; (d) a plan of action against discrimination and xenophobia; and (e) institutional mechanisms of consultation and coordination.

In general, migrant labour was considered to be a dilemma for States with regard to their basic policies and for civil society organizations. Many States had increased their barriers to the illegal entry of migrant workers, but in practice they tolerated large numbers of migrants in an irregular situation, especially in those sectors of the economy that paid low wages and lacked an adequate supply of local workers.

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<sup>18</sup> Coordinator of the Global Campaign for the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, ILO.

Where the economic and social conditions of globalization were strengthening legislative standards and democracy, they should do likewise for the regulation of migration and the labour market. International standards on refugees had constituted a guide for global policies and practices; complemented with international instruments on migration, these could serve as a solid basis for policies on migration.

Social associations and civil society organizations in general were engaged in a broad and sustained process of promotion of standards for government regulation of migration. ILO had invited all States to ratify the complementary package of conventions 97 and 143, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Their Families of 1990.<sup>19</sup>

## 2. Comments

During the discussion, Juan Miguel Petit<sup>20</sup> clarified that there was no such thing as illegal migrants, rather there were people who moved from one place to another and tried the capacity for tolerance, since it was easier to make laws than to change societies.

He said that it was necessary to convene a new agenda on protection, engaging the public and private sectors and developing a new concept of agents to include civil society organizations and the corporate sector. It was also necessary to attempt to build a type of citizenship that encompassed the whole of society and to create safety nets, because at present protection was only forthcoming in cases of emergency, whereas what was really needed was the ability to identify in advance where and what kind of problems could arise.

The second commentator was Martha Isabel Cranshaw.<sup>21</sup> She said that civil society demanded the signature and effective implementation of conventions and protocols, and that it was important to throw light on the new modalities of migration. She added that in Nicaragua, as in many other countries, budgetary constraints had made it impossible to strengthen certain rules and to conduct information campaigns, and that poverty was a serious factor in migration. She also referred to the high cost of emigration for society, and to its effects on the physical and mental health of women who, like children, were a highly vulnerable group.

## 3. Highlights of the unit

- In general, there was a consensus that the most vulnerable groups within migrant populations were women, children and adolescents. Particular attention was warranted by those groups that were forced to migrate by armed conflicts or by situations of extreme duress, and were then repatriated or deported without due protection and without any assurance of reintegration in their societies of origin.
- Progress made in the last few years in incorporating the gender perspective into the analysis and treatment of migrant populations had given rise to new interpretations of the determinants of migration, the composition of flows and the impact on migrants and their families as units of social reproduction in their places of origin, transit and destination. One of the main outcomes of this was the heightened importance afforded to the differentiated impacts of migration on women and children, whether they participated actively in displacements or remained in their places of origin.
- There was abundant evidence that migrant women and minors suffered discrimination, despite the growing number of instruments that had been signed into international law

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<sup>19</sup> See note 7.

<sup>20</sup> Special Rapporteur of the Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography.

<sup>21</sup> Representative of the Nicaraguan Civil Society Network for Migration.

to combat marginalization, exclusion and the abuse of fundamental rights. The problem did not seem to lie in the availability of conventions and standards, but in their effective implementation in the national sphere to sanction those responsible and protect victims.

- In the debate particular emphasis was placed on the disadvantages of girls, as the most vulnerable group and the victims of most abuse, and on the special assistance and protection they deserved.
- An emphasis was placed on the importance of special programmes to protect and guarantee reproductive health and rights, especially of migrant women and girls, and on the right of women and children to information and education.
- With regard to the health of migrant men and women, the debate highlighted the frequency of cases in which the trafficking and smuggling of persons, especially women and girls, led to forced sexual activity and involvement in prostitution. In many cases these practices resulted in the spread of sexually transmitted diseases, including HIV/AIDS.
- In many countries migration was both encouraged and repressed. The root of this problem appeared to be the irregular status of migrants, which was only worsened by tighter controls, since migrant workers were a constant source of cheap labour.
- Migrant workers faced growing hostility and their undocumented status perpetuated their inability to defend their dignity and working conditions. The labour status of women placed them at greater risk of abuse.
- Social organizations had an important role to play in promoting standards to regulate migration. A new agenda was therefore needed in respect of migrant protection, with the engagement of the public and private sectors and civil society organizations.

### **Unit III. Frameworks and programmes for promoting and protecting the human rights of migrants**

*“By promoting and coordinating the concerted participation of the different actors involved, beginning with migrants themselves, it will be possible to bring public policies, plans of action and strategies to prevent the violation of the human rights of migrants into line with the mandate of the Summit of the Americas process.”*

#### **1. Speaker**

##### **(a) Juan Méndez, Inter-American programme to promote the human rights of migrants within the framework of the Organization of American States**

Juan Méndez<sup>22</sup> was the sole speaker at this table. The first part of this section is an executive summary of his explanation of the intention and purpose of the respective programme, and the second sets out the salient points of the debate.

The speaker began by referring to the significant increase in migratory flows in the Americas. From the migrant’s point of view, the main purpose of migration was to find freedom, justice, equality of opportunities, employment and a better quality of life. But, more often than not, this purpose was not achieved, despite the international human rights instruments that had been developed, some of them specifically with the protection of migrant workers in mind, in the

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<sup>22</sup> President of the Inter-American Commission on Human Rights (IACHR).

framework of the Inter-American and United Nations systems. The fact of migrating, in itself, placed people in a vulnerable position. In this regard, the programme set out by Mr. Méndez represented a response to the mandate that the Heads of State had undertaken through the Summit of the Americas process. It was intended to promote the protection of the human rights of migrants, including male and female workers and their families, within the framework of OAS which, in the words of its Charter, appeals to “American solidarity and good neighborliness” to consolidate a framework of democratic institutions, individual freedom, social justice and human rights throughout the continent.

The programme had three basic components: promotion, assistance and protection. It was designed to be implemented over a five-year period, in order to provide technical cooperation in the implementation of measures in the spheres of administration, legislation, information, protection, education, training, oversight and evaluation.

The speaker said that the initiative was ambitious, but this was partly due to the premise that, by encouraging and coordinating the concerted participation of all the actors involved, beginning with migrants themselves, it would be possible align public policies, plans of action and strategies to prevent the violation of the human rights of migrants with the mandate of the Summit of the Americas process.

The programme’s working document had five parts: background, justification, general objective, programme components and methodological considerations and inputs.

The first part of the document dealt with the increase in the number of migrants, indicating that migratory flows were distributed in different ways and were not always readily visible. Although migration took a different form in each country, in general it was possible to distinguish between countries of origin, transit and destination. These three statuses were not exclusive, however, and the region displayed some complex cases of countries which played all three roles. In the document, the designation of country of origin, destination or transit was used only where it was useful to determine the obligations of States in each case. It was also necessary to recognize gender, ethnic, age, religious, social and cultural differences among migrants. The document then referred to the international instruments that provided generic protection of the human rights of migrants, such as the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, adopted by the United Nations General Assembly in 1990. It also mentioned regional instruments developed to protect human rights on the American continent. Despite this, specific instruments to protect the migrant population in the region were lacking, although the establishment of special rapporteurships within the Inter-American Commission on Human Rights (IACHR) and the United Nations represented progress in this regard.

In the section on justification, the document explained the complex facets of the problems associated with migration, such as: (a) access to legal protection of their rights; (b) guarantees of due process; (c) access to social services and benefits; (d) discrimination, racism and xenophobia; (e) gender discrimination affecting migrant women; (f) discrimination against children and adolescents, and discrimination based on age; (g) the recognition of labour rights; (h) freedom of association and peaceful assembly; (i) the situation of families left in countries of origin; (j) deprivation of freedom because of discrimination against migrants; (k) penalization of lack of support for the victims of the crimes of trafficking of migrants and smuggling of persons; and (l) the development of international instruments of protection.

The third part indicated that the programme was intended to benefit people who had left their country of origin for another, either as migrant workers or as seekers of refuge or political asylum. This part also set out the substantial concerns the programme had attempted to address, such as specific attention to migrant status, gender and the different ages of people covered by the processes stemming from the programme.

The programme components of promotion, assistance and protection were presented as a fully balanced triangular structure. Each of these components with its respective outcomes and the activities needed to achieve them were explained.

Promotion was intended to encourage and support the development of public policies, plans of action and programmes to prevent the violation of the human rights of migrants. This component was expected to generate four outcomes: (1) the alignment of public policies and plans of action on issues of migration or issues affecting migrants with respect for and guarantees of their human rights, in conformity with the relevant international instruments; (2) the elimination of all kinds of discrimination, racism and xenophobia, and gender equity in public policies and plans of action on migratory issues or issues affecting the protection and guarantee of the human rights of migrants; (3) raising of awareness of the contributions made by migrants and their families to different societies; (4) proper dissemination of information in communities within countries of origin on the vulnerability of migrants, the protection of their human rights and coordination with gender issues.

The second component, assistance, was geared towards promoting and supporting government and non-government programmes of assistance and attention to migrants whose basic rights had been violated or who were in vulnerable situations. This component also had four expected outcomes: (1) the creation or strengthening of emergency assistance services to meet the basic needs of migrants in vulnerable situations; (2) efforts to create alternatives to arresting migrants and, if this were not possible, to ensure proper conditions of detention; (3) assistance and protection for victims of migrant trafficking and smuggling of persons; and (4) assistance for migrants' family members who had remained in their countries of origin and were in danger or vulnerable, such as older adults, minors and other family members.

The last component, protection, was intended to develop and strengthen national, regional and international mechanisms to protect the human rights of migrants. The seven expected outcomes of this component were: (1) to encourage the countries of the region to sign, ratify and implement international instruments on migration and the protection of human rights; (2) to develop a process to establish a regional instrument on the promotion and protection of the human rights of migrants; (3) to prepare updated national legislation to guarantee and protect human rights and gender equity with regard to migration; (4) to strengthen the protection of rights, in particular the right to due process of migrants charged with violation of migratory rules under penal and administrative procedures; (5) increase the jurisprudence of national courts of justice and of the Inter-American and universal systems with regard to the protection of the human rights of migrants; (6) strengthen the capacity of civil society organizations to invoke national, regional and international mechanisms to protect the human rights of migrants, taking into account gender equity and the needs of vulnerable populations; and (7) establish links of cooperation and coordination among the staff of civil society organizations and relevant officers in offices of ombudsmen and special rapporteurs responsible for protecting the human rights of migrants.

The main methodologies set out in the fifth part of the programme concerned a democratic ideal that encompassed respect for and guarantee of human rights. For this reason, four main guiding principles had been established: (a) to achieve the active participation of migrants in improving their situation; (b) to coordinate the different components of the programme in order to ensure that its measures worked together to produce an integrated whole; (c) to use a gender transversality-based approach and include different ethnic groups and minorities who have suffered discrimination; and (d) include measures intended to guarantee that the processes will be sustainable over time.

## 2. Comments

The first commentator on this table was Alejandro Salinas,<sup>23</sup> who said that the OAS initiative was an extraordinary undertaking, because of its vision of migratory processes in the hemisphere and the inclusion of concrete issues such as women's and children's rights. He drew attention, however, to the need for activities of awareness-raising and training for government staff, who were often the first to come into contact with immigrants and who represented an essential link in the chain of integration. He emphasized that it was essential to establish due legal process for the protection of migrants in order to find alternatives to the practices of arresting and incarcerating undocumented migrants. He asked for clarification of the legal status of the programme and of the distribution of responsibilities between States and the new initiative, in order to establish who was responsible for each activity and what evaluation mechanisms would be used. Lastly, he called for codes of conduct or similar mechanisms for the media, which played a key role in the formation of opinions on migrants, and for the private sector, which was responsible for absorbing the bulk of newly arrived migrant labour.

The second commentator was Javier Mujica,<sup>24</sup> who said that the human rights perspective should serve to establish indispensable and non-negotiable prerogatives to ensure a decent life for migrants. Some outward migration-producing countries entrusted the protection of their citizen's rights to the international instruments signed by their governments, but the financial accords they later adopted contradicted the human rights conventions they had ratified. While this contradiction persisted, the effectiveness of a programme such as the one set out by Juan Méndez was questionable. The inclusion of civil society representatives in the debate on the programme was a positive step, but efforts should also be made to engage other actors in this effort, including the private sector and the international financial agencies. In his view, there was no need for more mechanisms of this type, rather it was necessary to ensure compliance with the ones that already existed. Lastly, the involvement of civil society in the oversight of laws was crucial in order to reconcile national and international legalisation.

## 3. Highlights of the unit

- The increase in migration within the region made it necessary to formulate concrete responses to the problems of vulnerability and abuse to which migrants were exposed. This was the context for the creation of a programme to promote the human rights of migrants, at the initiative of the OAS Inter-American Commission on Human Rights (IACHR).
- One of the most significant aspects of this programme's design was its integrated approach—including gender dimensions—based on three pillars: promotion, assistance and protection. Each of these encompassed specific areas of work, whose successful implementation would depend to a large extent on the cooperation and engagement of the government institutions responsible for dealing with migrant populations.
- It was also important to put to good use the vast experience of IACHR in promoting, protecting and assisting in the defence of human rights in general, particularly to ensure some basic aspects such as access to and guarantees of due process, as well as oversight of compliance with international standards.
- It was mentioned that for this purpose the programme proposed to develop appropriate mechanisms to engage civil society forums, in order to make them active players in ensuring observance of national precepts and international commitments on human rights. It was also important to incorporate other actors into the process such as the corporate and private sector,

<sup>23</sup> Human Rights Director of the Chilean Ministry for Foreign Affairs.

<sup>24</sup> Representative of the Human Rights Programme of the Peruvian Labour Advice Bureau (CEDAL) and of the Inter-American Platform for Human Rights, Democracy and Development (PIDHDD).

international financial agencies and, in particular, migrant organizations in destination countries.

- While the programme focused on the valid concern of promoting the human rights of migrants, it was not to be forgotten that the right to migrate necessarily had to be considered in tandem with people's right to remain in their country of origin. It was important not to lose sight of the fact that migratory policies should order and regulate flows of migration, as well as preventing and dealing with the negative effects of emigrations on families and communities at the place of origin.
- Attention was drawn to the importance of including activities of awareness-raising and training for staff, since unless they prepared to conduct the tasks envisaged, it was unlikely that the objectives would be achieved properly and efficiently.

## C. Trafficking in persons

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*“Trafficking in persons consists of three separate elements: (a) the recruitment, , transportation, transfer, harbouring or receipt of persons; (b) the use of threats, force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; (c) the purpose of exploitation, including, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.*

### Unit I. Trafficking in persons and human rights

**Moderator:** Pilar Norza, IOM Regional Representative for the Andean Countries.

#### 1. Speakers

(a) **Carmen Artigas, Organized crime as a serious form of violation of human rights: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**

The first presentation was made by Ms. Carmen Artigas.<sup>25</sup> She said that the Millennium Declaration reiterated the need to free humanity from fear and want and at the same time to fight organized

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<sup>25</sup> Chief of the Human Rights Unit of the Social Development Division of ECLAC.

crime, trafficking in human beings, money laundering and all forms of exploitation. The main causes of those scourges were poverty and the humanitarian emergency situations arising from natural disasters and armed conflicts. Annual trafficking in persons was estimated to affect between 700 thousand and 2 million persons, mostly women, children and persons from the poorest walks of life.

Ms. Artigas, whose analysis was based on a text by Ms Anne Gallagher<sup>26</sup>, said that the process of negotiation of the United Nations Convention against Transnational Organized Crime, referred to as the “parent agreement”, and its protocols<sup>27</sup> was the first decisive attempt made by the world community to invoke international law in its fight against transnational organized crime. The provisions of the Convention applied *mutatis mutandi* to three additional protocols and States had to ratify the Convention before proceeding to ratify any of the protocols. The instrument encompassed five crimes, whether committed by individuals or corporate entities:

1. Participation in an organized criminal group;
2. Money laundering of the proceeds of the crime;
3. Corruption;
4. Obstruction of justice;
5. Serious crimes.

The Convention also contained a brief but important provision on assistance and protection for the victims of the transnational organized crime; protection for witnesses, including victims who acted in that capacity, from reprisals or intimidation and an exhortation on States to participate in international projects that prevent transnational organized crime.

In terms of the protocols, the first proposal for dealing with the problem of smuggling of migrants was presented in 1997 to the Commission for Crime Prevention and Criminal Justice by the Government of Austria, which was subsequently joined by Italy. Smuggling was defined “*as facilitating the illegal entry of a person into any State Party of which that person is not a national or in which that person has no right of permanent residence*” [...] “*in order to obtain, directly or indirectly, a financial or other material benefit*”.

For its part, the protocol on trafficking arose out of Argentina’s concern regarding trafficking in minors and because that country considered that an exclusive perspective of human rights on the issue of trafficking would be insufficient; in that sense, it advocated broaching the issue through a strategy against transnational organized crime. While that protocol encompassed all persons, special reference was made to women and children.

The definition of trafficking listed three separate elements:

1. An action that consists in the recruitment, transportation, transfer, harbouring or receipt of persons;
2. The use of threats, force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person who has authority over another;
3. The purpose of exploitation, including at a minimum the exploitation of the prostitution of another person or other forms of sexual exploitation, labour or forced services, slavery or similar practices, servitude or the removal of organs.

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<sup>26</sup> Anne Gallagher (2001), “Human Rights and the New United Nations Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis”, *Human Rights Quarterly*, 23 (2001) 975-1004, The Johns Hopkins University Press.

<sup>27</sup> See note 15.

Those three elements were indispensable for the Convention to be applicable, except in the case of minors (under 18 years of age), for which the second element was not absolutely necessary. The agreed definition of trafficking contained a reference to the effect that consent to the exploitation was irrelevant once any of the elements that effectively defined trafficking (coercion, fraud, abuse of power) had been used.

The panellist related some of the discussions that had taken place during negotiation of the Convention and its protocols on controversial issues, those that had not been incorporated as well as those that were. The former included:

- A provision designed to protect the victims of trafficking from prosecution for other possible offenses such as illegal migration, undocumented labour and prostitution.
- The obligation that the State allocate part of the retention money or confiscation of profits from the trafficking for assistance to and compensation of victims.
- Incorporating the right of victims to remain in the country of destination at least temporarily because most of the delegations considered that it would foster illegal immigration even more and in the long run would benefit the traffickers.
- The proposal of the Office of the United Nations High Commissioner for Human Rights (OHCHR) to the effect that the safe and, where possible, voluntary return, should be the centre of any credible strategy for protecting persons who are victims of trafficking.
- The proposal that identification of an individual as a victim of trafficking should be sufficient to ensure that the victim would not be immediately expelled against his/her will and that the protection and assistance of the protocol would be immediately applicable.

The following points were accepted:

- The commitment by States to protect the privacy and identity of victims and to ensure that their internal legal or administrative system provides measures for providing the victims with: (a) information on relevant legal and administrative procedures; (b) assistance geared to allowing their opinions and concerns to be presented and examined in the appropriate phases of the criminal proceedings against the criminals, without it impinging on the right to defence.
- Motivating the States parties to apply measures for assistance to victims, such as (a) adequate housing; (b) advice and information, in particular with respect to its legal rights in a language that the victims can understand; (c) medical, psychological and material assistance; and (d) opportunities for employment, education and training.
- Repatriation as a shared cost between the States of origin and destination and governed by provisions that international custom imposed on the return of migrants.
- The incorporation of a formula to the effect that none of the provisions of the protocol would affect the rights, obligations and responsibilities of the States and persons in accordance with international law.

Ms. Artigas also said that the protocol faced some limitations, such as the emphasis on the capture of traffickers, rather than on identification and protection of the victims. It was also estimated that the types of control that were advocated would limit the rights and opportunities of individuals to seek and enjoy asylum to protect themselves from prosecution in other countries. At the same time, the distinction between persons who were victims of trafficking and victims of smuggling would probably be difficult and controversial and various potential problems were

foreseen. It would appear that both protocols placed the burden of proof excessively on the person seeking protection, but, unfortunately, none of the protocols covered the operational link between trafficking and smuggling.

However, she said that the protocols opened an opportunity for discussion and collaboration at the regional and international levels and underscored the urgent need for adequate legal and political responses at the national level. Reference should also be made to the European Union's participation in the efforts to contribute to the study of, and fight against, trafficking in persons embodied in the Framework Decision for Combating Trafficking in Human Beings adopted on 19 July 2002 by the Council of Ministers; it was also important to recognize the work of INTERPOL on the same subject, with emphasis on children and women with respect to child slave labour and the funds resulting from criminal activities.

**(b) Gabriela Rodríguez, Trafficking in persons and the human rights of migrants**

The second presenter, Gabriela Rodríguez,<sup>28</sup> began by presenting the situation of migrants in the world, highlighting the increase in their numbers, their increasing vulnerability and the risk they faced of falling prey to traffickers or corrupt authorities. She described the international legal instruments that existed for protection of the human rights of migrants. She said that States had the obligation to protect the human rights of all persons who were under their jurisdiction irrespective of their nationality or status with respect to migration. At the same time, she stated that the existence and importance of additional obligations in the context of the trafficking in persons were being increasingly recognized.

The rights of victims and concern for their defence were embodied in legal instruments, such as the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child and its Protocol; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Slavery Convention; the Protocol amending the Slavery Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the Forced Labour Convention; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; some ILO documentation; and the Statute of Rome of the International Criminal Court; and also in the outcome of international forums, such as the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; the World Conference on Human Rights; and the Fourth World Conference on Women.

In particular, on the issue of trafficking in persons, the only treaty in force since 1949 was the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which had omissions with respect to the full protection of victims and, moreover, did not have a human rights approach. Therefore, its entry into force required the approval of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which complements the United Nations Convention against Transnational Organized Crime.

The Special Rapporteur pointed out that one of the principal issues of concern to the United Nations was the trafficking in persons with special emphasis on that of women and girl children for purposes of prostitution. But the Organization was also concerned about the human rights of migrants, especially those who were deprived of their freedom; the case of unaccompanied minors who were highly vulnerable to becoming victims of trafficking; and racial discrimination and xenophobia which were associated with trafficking in persons. For those reasons, the Secretariat was working jointly with the Offices of Special Rapporteurs and the organs that monitored those

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<sup>28</sup> Special Rapporteur on the Human Rights of Migrants of the United Nations Commission on Human Rights.

treaties, working groups on contemporary forms of slavery and the Office of the High Commissioner for Human Rights, among other bodies.

One of the important points in support of ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was that trafficking in persons was not just a form of forced migration and a violation of the human rights of migrants, but that it was a transnational crime which States had the duty to combat.

The Protocol instituted a generally accepted definition of trafficking in persons, which made it possible to identify its victims without further ambiguity. Thus, although it was not an instrument geared to promoting transborder police and judicial cooperation for combating a crime, it took into account a human rights dimension which, according to the Special Rapporteur, was indispensable for the effective protection of the victims of trafficking.

In accordance with the provisions of this Protocol, it was not necessary for the victims to cross the border of their country to be considered victims of trafficking, since the key element in the process of trafficking was exploitation and not its transborder character.

For the Special Rapporteur, the recommended principles and guidelines on human rights and the trafficking in persons developed by the United Nations High Commissioner for Human Rights constituted another frame of reference for combating the trafficking in persons. They were aimed at promoting and facilitating the integration of a human rights perspective in laws, policies and actions against trafficking at the national, regional and international levels.

To conclude, the speaker urged that the victims of trafficking should not be penalized or under any circumstances subjected to detention under immigration regulations or any other form of detention. She also recommended that immigration officers and public force agents who had to deal directly with the victims should be given proper training so that they would safeguard first and foremost the security and well-being of such victims. Similarly, she said that major information campaigns were being conducted on the risks of irregular migration and the distinction between the fight against the trafficking in persons and the restrictive policies which only fostered the use of irregular migration channels and, as a result, increased the chances of falling prey to traffickers.

## 2. Comments

The first commentator was Ana Elizabeth Cubías,<sup>29</sup> who stressed the importance of distinguishing between smuggling and trafficking in persons, since the latter involved serious violations of human rights and the victims should be considered as such and not as offenders. She added that it was vital to give technical assistance to inform and train public officials and authorities who had contact with the victims of trafficking to enable them to distinguish between the victims and the traffickers. Thus, it was important to set up databases on national and regional migration flows, such as the Statistical Information System on Migration in Central America (SIEMCA), and to launch information campaigns among potential migrants, especially women, to advise them of the risks of illegal entry into another country. Civil society networks had considerable influence in the fight against trafficking in persons; the same applied to States, which were responsible for taking administrative and legal measures for ratifying and implementing the United Nations Convention against Transnational Organized Crime and its Protocols.

According to Ms. Cubías, the recognition by the Regional Conference on Migration of the shared responsibility of the countries of origin, transit and destination of migrants in the trafficking in persons was a precedent and should be included in the regional agenda. One of the concrete results of the above was Mexico and the Central American countries' idea for setting up a Central American Consulate in Mexico to attend to and protect victims of trafficking. She recognized,

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<sup>29</sup> Director of the Integral Social Development Unit in the Ministry of Foreign Affairs, El Salvador.

however, that that effort did not resolve the generalized lack of human and financial resources of the consulates of the countries, especially of the sending countries. Another important effort in that area had been made by El Salvador, when it signed an agreement in which it undertook to create a fund for the repatriation of Salvadoran migrants victims of trafficking (including those who had been seriously harmed or who were ill). The Government of the United States, together with IOM, supported that project by financing the creation of shelters for victims of trafficking.

The second commentator was Mr. Manuel Ángel Castillo,<sup>30</sup> who explained that the issue of migration posed enormous conceptual challenges, in which the communications media could play an important role. He said that the presentations of the two panellists were complementary. Ms. Carmen Artigas had prepared a conceptual, theoretical and legal framework and Ms. Gabriela Rodríguez had contributed her valuable experience in the field; thus the theory and practice had been integrated to give a perspective of how international instruments had been inefficient in failing to include the moral issues which Governments had not been able to cover either. The continent of the Americas had had a long history of undocumented migration, due to structural causes; those causes needed to be studied from integrated, multilateral and multidisciplinary perspectives, instead of from a unilateral and restrictive perspective, which only facilitated the spread of trafficking in persons and made it a highly reprehensible lucrative activity, given the risks that it implied, not to mention the corruption and impunity of the beneficiaries and the vulnerability of the migrant whose life was endangered. The only way to break the vicious spiral was by creating social elements and practices among authorities and representatives of civil society. Not only should they add to the legal instruments but it was also vital to address the root causes rather than just the symptoms of the problem; in other words, one should deal both with the issue of migration and with that of the protection of the victims of smuggling and trafficking; indeed, the tendency was to criminalize the victims by referring to them as illegal; however, that usage failed to recognize that illegality was not something that was intrinsic but was a temporary circumstance. It was a matter, not of being illegal, but of being in an illegal situation. Therefore, some migration laws were unfortunate in their wording, since they referred to it as a “migration offence” and that type of inconsistency should be cleared up.

### 3. Highlights of the unit

- One of the advances noted in the knowledge and debate on the nature and characteristics of trafficking relates to the concepts and their legal interpretation. Presenters and commentators alike underscored the essential aspects of the crime of trafficking as established in the corresponding protocol.
- Trafficking was an act undertaken to facilitate the movement of persons through the use of force and with the aim of exploiting them, although special consideration should be given to the case of minors since, given their vulnerability, the explicit use of force was not necessarily involved.
- Given its illicit nature, it was suggested that trafficking should be considered as a transnational crime, which committed States to adopt actions to combat it. Nevertheless, it was pointed out that essential aspects of the phenomenon were also present in internal movements within countries, so that a border crossing was not an essential element in that crime.
- There was also some confusion with regard to the concepts of smuggling of and trafficking in persons; indeed, smuggling implied support for the movement of persons as part of a lucrative activity, but there was no coercion or exploitation of the persons involved. That was a conceptual detail which had not been fully addressed in the

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<sup>30</sup> Professor and researcher at El Colegio de México, México.

protocols and which presented operational difficulties; the solution to those omissions should be translated into differential treatments and punishments.

- It was reiterated that States had the obligation to protect the human rights of all persons on their territory, irrespective of their origin and migratory status. To that end, the international legal framework had been enriched by a growing number of Conventions and protocols on the issue and, especially, at the current time, with instruments designed to combat organized crime, which included among its practices the trafficking in persons.
- It was stressed that the main problem was not the lack of policy-making instruments in international law for addressing this type of problem, but their effective application by States parties.
- The recurrent concern was that, at the same time as measures were being taken to prosecute and punish the perpetrators of the trafficking and to combat impunity of such persons, mechanisms and necessary provisions should be generated to guarantee the effective exercise of the rights of victims and to prevent the latter from being penalized and subjected to discriminatory practices.
- The label of “illegal” migrants should be abolished, since the irregular and unauthorized situation of migrants is a temporary situation and derives from what is generally an administrative lack.
- In that regard, every effort should be made to guarantee the participation of witnesses and to protect them from possible reprisals that intimidate them and inhibit their active presence in judicial processes. Conditions should be generated such that actions in defence of the rights of victims and the guarantee that they can participate in the processes prevail over other administrative measures, for example, those arising from their irregular migratory status and which can result in their immediate expulsion or deportation.
- In terms of concrete actions, it was considered necessary to generate training programmes for officials, such as security agents, who have to deal directly with migrants to make them aware of the need to treat victims differently from traffickers.
- Participants also suggested staging information and communication campaigns on the dangers of trafficking, especially for groups identified as populations at risk because of their vulnerability to recruitment by criminal networks.
- The system of consular protection, one of the initiatives proposed at the Regional Conference on Migration, was a useful mechanism for assisting in combating trafficking. One generalized problem was the chronic lack of resources and the financial constraints which made it difficult for Governments to fulfill this essential responsibility.

## **Unit II. Baseline analysis of trafficking in persons in the Americas**

*"At both the national and international levels, the focus must be investigation, judgement and sanctioning of the promoters and perpetrators of these crimes. The passivity of the authorities, the apparent short-sightedness, the complicity of many authorities with the groups that operate trafficking networks, the existence of a parallel tax that goes to officials in the private sector, and to some local and national governments in a structured and systematic manner, leads to a suspicion of government complicit".*

**Moderator:** Ximena de la Barra, UNICEF Regional Advisor on Public Policies.

## 1. Speakers

(a) **Mohammed Mattar, Trafficking in persons, especially women and children in the countries of the Americas. A regional report on the scope of the problem and the governmental and non-governmental response**

The presentation was made by Mr. Mohammed Mattar,<sup>31</sup> and had an integral focus on trafficking in persons in the hemisphere. It was estimated that every year between seven hundred thousand and two million persons were the victims of trafficking between countries of origin, transit and destination.

The report concentrated mainly on sex tourism and child pornography, although it also documented labour trafficking, especially in relation to boys and girls in domestic service. It also considered trafficking for the purposes of illicit adoption from one country to another, for military purposes, and the relationship between HIV/AIDS and trafficking in persons in the countries of the hemisphere.

Various factors were identified as causing and propagating those forms of trafficking, including poverty, lack of education and underdevelopment in general.

Governments had taken various measures to provide assistance and protection to trafficking victims, including legal support, shelters, special assistance centres and medical services.

The speaker emphasized that the efforts to combat trafficking were being impeded both by the lack of adequate resources and by the corruption of public officials. In those cases where there were shortcomings in government actions or where the response was inadequate, the role of non-governmental organizations was particularly important, as civil society organizations could fill gaps in government policies by mediating between the State and individuals. He also proposed some elements for a model law that the countries of the hemisphere could consider in order to modify existing laws or pass new laws against trafficking.

The model law was based on four main considerations. Firstly, the law against trafficking should not only form part of the penal codes, but also cover all aspects of trafficking in a separate section. Second, it should consider the person subjected to trafficking as a victim who was entitled to have his or her fundamental human rights respected. Third, the law against trafficking should recognize all forms of trafficking as criminal offences. Lastly, trafficking should be recognized as a serious crime, which had to be punished with an appropriate penalty.

At present, there was a serious lack of reliable studies and analytic documents on trafficking in persons in the continent. More research was needed in the economic aspects of crime in the areas of prostitution, forced labour, pornography and corruption and there must also be consideration of the links between prostitution, military recruitment, domestic labour, sexual exploitation of minors, street children, child labour, pornography, adoption from one country to another, corruption and the way in which those practices were related to trafficking in persons and served to make those persons vulnerable.

Mr. Mattar recommended filling in the gaps in the existing research by gathering and exchanging information.

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<sup>31</sup> Co-Director of The Protection Project, Johns Hopkins University.

**(b) *Susana Chiarotti, Trafficking in women: connections and disconnections between gender, migration and human rights***

Ms. Chiarotti<sup>32</sup> said that the event provided her with an opportunity to express her concern to study in depth the topic of trafficking in women and the connections and disconnections between that topic and those of gender, migration and human rights.

The smuggling<sup>33</sup> of women in Latin America can be considered as occurring in two forms, depending on its characteristics: internal smuggling, which responds to the demand existing within a country, and external smuggling, which was aimed at meeting a broader demand in the international market, especially from Japan, and was thus directly related to European and Asian networks, which have their points of operation and recruitment mainly in Brazil, Suriname, Colombia, the Dominican Republic and the Antilles, to supply distribution centres based in Spain, Greece, Germany, Belgium and Holland.

In Latin America, the smuggling of children and women had the usual characteristics of smuggling of women: individuals were deceived by the traffickers and obliged to work against their will and in conditions of slavery. Organized groups of traffickers used violent methods, managing to intimidate the victims and avoid punishment for their crimes; in some cases, those who informed the police were assassinated when the trial began, and in others the victims were located and recruited again.

Internal smuggling mainly involved the child and adolescent population, or young single mothers; the average age varied from nine to seventeen years and the victims came from villages in the poorest areas of each country. The networks of traffickers moved individuals not only from one country to another, but between different provinces and regions of the same country, subsequently forcing them to practice prostitution.

UNFPA, in its September 2000 report, reported that four million women were sold each year for one of three purposes: prostitution, slavery or marriage; and two million girls for the sex trade. IOM estimated that five hundred thousand women entered Western Europe every year as a result of trafficking for the purposes of sexual exploitation.

All over the world, brothels were organized, along with other services, following the installation of a military base, and very often with the cooperation of the armed forces. In some of those sites there were hundreds of young women who were victims of smuggling.

A large proportion of the women and children who were victims of smuggling were destined for sex tourism, and a combination of racial and gender stereotypes exacerbated the exploitation of indigenous women and those of African descent.

All the countries in the region had ratified CEDAW, article 5 of which contained a clear mandate to the State, society and the family to eliminate the discriminatory stereotypes against women which still persisted in those institutions.

According to Chiarotti, both non-governmental and governmental organizations had to aim to ensure the right to health in an integral way for all the inhabitants of a country, whether nationals or foreigners, migrants or smuggling victims, men or women and without focusing excessively on HIV/AIDS programmes. In that way, all individuals who needed to do so could have access to health services and it would avoid a situation where migrants or trafficked persons were immediately considered persons more likely to be infected, which could arise when the programmes were too narrowly focused.

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<sup>32</sup> Consultant to the Women and Development Unit of ECLAC.

<sup>33</sup> Editors' note: this is the term used by the speaker.

In connection with the crime of trafficking in women, something happened that was similar to the case of crimes of sexual violence: the victim ended up being the accused. That process occurred in local law courts in the judging of crimes such as rape, statutory rape or sexual abuse. The focus of the investigation was drawn away from the accused to the victim and continued with an analysis of the behaviour, personal background, and in particular the sex life of the victim.

Those responsible for that crime were those who made a profit from trafficking in women, and Mafia organizations had been identified in several countries. It had been estimated that there were about five thousand organizations profiting from trafficking for sexual exploitation.

Most countries had not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, but even those who had signed it had not yet provided appropriate national mechanisms and laws for investigating, prosecuting and punishing those crimes, protecting witnesses and seeking reparation for the victims.

In his paper, the speaker made some recommendations for initiatives and social programmes. At both the national and international levels, the focus should be on the investigation, bringing to justice and punishment of the promoters and perpetrators of those crimes. The passivity of the authorities, the apparent short-sightedness, the complicity of many authorities with the groups that operated trafficking networks, the existence of a parallel tax that went to officials in the private sector, and to some local and national governments in a structured and systematic manner, led to a suspicion of government complicity.

The forces of the law should send a clear message to the victims with their actions, and should provide secure areas where the victims of trafficking or sexual exploitation could seek help. If there were delays, complicity with the traffickers or penalizing of the victims, the effect would be to continue discouraging the reporting of the criminals, and would thus make it difficult to pursue, punish and eradicate the crime.

Chiarotti asked the governments to ensure that their actions to prevent international trafficking in women and children did not inhibit migratory freedom or the freedom to travel and circulate in accordance with the laws, and in particular that they did not reduce the protection provided to men and women refugees by international law. Implementation of the mandates contained in CEDAW —especially in article 5— would include promoting cultural changes that would eliminate condescending and discriminatory treatment of women. The implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women —which had been ratified by most of the States in the region —would also contribute to eliminating some of the factors that forced women to migrate from their homes.

### **(c) Bruce Harris, Trafficking in children**

Mr. Harris<sup>34</sup> emphasized in his paper certain commitments made by the States parties to the Convention on the Rights of the Child (CRC), and also presented some information relating to the United States Report on Trafficking in Persons (2002).

According to the CRC definition, every human being below the age of 18 years was a child. The commitments made under that Convention included the adoption of measures to combat illicit transfers and detention of children abroad, as well as all the appropriate legislative, administrative, social and educational measures to protect children against all forms of violence, prejudice or physical or mental abuse, harsh treatment, exploitation, including sexual abuse; he also referred to measures of a national, bilateral and multilateral nature that would be necessary to prevent kidnapping, sale or trafficking in children for any purpose or in any form.

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<sup>34</sup> Regional Director of Casa Alianza.

The Report notes that in 2001, at least seven million men, women and children were bought, sold, transported and detained against their will throughout the hemisphere, in conditions similar to slavery. The victims of the trafficking were persons of low income, who did not speak the local language, travelled with false documents and did not know where to seek help; they were also afraid to report the trafficking for fear of being deported or imprisoned. At the same time, weak border controls and the corruption of migration officials facilitated the transport of the victims.

An investigation by Casa Alianza noted that dozens of children and adolescents from Guatemala, Honduras, El Salvador and Nicaragua were taken by traffickers to Mexico, some with the promise that they would be transferred to the United States to be reunited with their families, others were abandoned, others sold to brothels in the area and then became victims of a number of violations of their rights.

The speaker referred to the characteristics of trafficking in persons and to the factors of incidence in Central American countries. In Guatemala, illegal adoptions had become an illicit business that has extremely profitable for those involved in those kinds of activities, taking advantage of poverty, ignorance, and a lack of economic opportunities. That country was a transit point on the way to the United States.

There were two aspects of trafficking in persons in Honduras:

- The recruitment of girls and adolescents to be taken and sold in brothels on the border between Guatemala and Mexico.
- It has become a place for receipt and transit of minors from Nicaragua and Guatemala, who have mostly been deceived in relation to the type of work offered to them.

In Salvador, extreme poverty, intra-family violence, broken families and some sociocultural aspects resulted in a large number of Salvadoran girls and adolescents being taken to brothels in Guatemala, where they were the victims of violence at the hands of the owners of those places.

Nicaragua functioned as the main "supplier" of victims of sexual exploitation to all the countries of the Central American region. Nicaraguan adolescents were taken by deceit to Costa Rica for sexual exploitation. The border area between the two countries was highly vulnerable, which allowed trafficking in persons —especially minors— to occur and sometimes with the complicity of the authorities of the two countries.

Costa Rica was a "receiving" country of trafficking victims. There were victims from remote places (the Philippines, Rumania, Russia) who entered the country as "students of the rain forest". As in Nicaragua, migration control was scarce and there was a high degree of impunity.

Mr. Harris presented a programme, part of the work of Casa Alianza, entitled "Building a new life for migrant children: a pilot project", whose objective was to contribute to protecting the rights of migrant children by preventing homelessness, trafficking and exploitation in all of Central America and by supporting repatriation and social reintegration of children who lived in the streets.

## 2. Comments

During the discussion, Pedro Oyarce<sup>35</sup> gave a very positive assessment of the presentations and noted that they would be very useful for drafting policies and interventions. His comments related to the following topics: (a) the need for modern legal frameworks that severely punished trafficking and did not penalize or stigmatize the victims; in that connection he emphasized the CRC as a widely-accepted framework; (b) the relevance of an approach that combined prevention, assistance and protection; (c) the need to make the actors most vulnerable to trafficking more

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<sup>35</sup> Director General of Multilateral Policy, Ministry of Foreign Affairs, Chile.

visible; (d) the vulnerability of migrants, which was directly related to their irregular status in the destination country; and (e) the effective implementation of agreements relating to that issue.

It was important not to penalize the victims and avoid criminalizing migration. With regard to mechanisms for prevention, assistance and protection, cooperation mechanisms and information campaigns were needed that involved all the social actors; it was important to avoid a situation where concern for victims led to the adoption of restrictive migration policies; public policies should give attention to the feminization of migration; more irregularity in migration meant that the migrants were more vulnerable.

### **3. Highlights of the unit**

- In the region there was evidence of an increase in the purchase, sale, transport and detention of persons against their will and in conditions similar to slavery, for lucrative purposes and generating large profits for individuals and for organized criminal groups.
- One of the greatest concerns with regard to trafficking practices was the increasing victimization of particularly vulnerable people, as in the case of women—especially young single mothers— boys, girls and adolescents of both sexes, who were mainly recruited for sex trade and tourism activities, domestic service, and child pornography.
- In the case of women, an in-depth study should be made of the relationship between trafficking, gender, migration and human rights, as trafficking was not exclusively an international issue relating to the demand generated in that context, but also occurred within countries and in different forms.
- It was recalled that CRC had defined as children all human beings aged under 18 years, so that a broad perspective should be adopted for dealing with all the situations resulting from trafficking in persons, with special care in the case of minors and particularly that of girls; that required, among other aspects, harmonizing the contents of international regulations and the principles of national legislations, which, in some cases, established the age of sexual consent at 12 years, and also differences of gender in that area.
- Another phenomenon directly related with the forms of trafficking and that had to be monitored and combated, was discrimination against its victims, as a combination of racist and sexist stereotypes was frequently disseminated, especially in the exploitation of women; in that connection, it was important to reaffirm the need to eradicate any form of discrimination and violence against women, in accordance with the conventions adopted by the international community.
- Another special need was in the case of minors who were exposed to various forms of ill-treatment, violence, prejudice or physical and/or mental abuse, exploitation, sexual abuse, kidnapping and other practices. Specific institutional responses were needed, both in the area of prevention and in protection, assistance and social reintegration.
- Although the governments of countries particularly affected by those facts had adopted special measures to afford protection and assistance to the victims, it was a cause of concern that they still encountered significant limitations owing to the lack of resources, and owing to corruption and possible complicity of public officials and agents of the authorities.
- One way for making progress in that direction could be to draft and adopt a model law that would include at least the following elements: (a) dealing with trafficking

practices in a specific chapter of the penal legislation; (b) a clear definition with regard to protection of victims, which avoided their stigmatization and guaranteed them the right to make a complaint; and (c) the explicit recognition of trafficking as a serious crime, subject to appropriate sentences. All of the above should be accompanied by decisive action to eradicate the impunity of the actors responsible for trafficking in persons.

- It was important that the measures adopted to combat trafficking in persons did not result in criminalization of migration, and that they both guaranteed migratory freedom and maintained the protection mechanisms included in the international legal framework for asylum-seekers. The concern for the consequences of trafficking must not result in the adoption of restrictive migratory policies, without a broad view of human rights, with awareness of the vulnerability of migrants and the causes and purposes of their movements.
- In order to support the design of suitable legislation and of appropriate assistance and protection programmes for trafficking victims, support had to be provided for research efforts, which at present were on a small scale, to explore the links between trafficking and other processes commonly associated with it, such as poverty, prostitution, forced labour, street children, child labour, pornography, the adoption of minors, corruption and military recruitment.

### Unit III-A. Prevention and assistance (best practices and future activities)

*“Making a distinction between an undocumented migrant, a victim of trafficking and even a refugee was a big responsibility and a large and unclear process. At times, the very victims of trafficking do not even see themselves as victims, given that migrant workers prefer exploitative conditions in a rich country to “impoverished” freedom in their own. Furthermore, reporting their exploitation would cause them to be immediately deported; In other words, their ‘rescue’ would signify their ‘capture’”.*

**Moderator:** Gina Gallardo Rivas, Expert in Migratory Matters of the Secretaría de Estado de la Mujer, Dominican Republic.

#### 1. Speakers

##### (a) **Guy Bélanger, Canadian approach to fighting and preventing trafficking in persons**

The first presentation of the block was given by Guy Bélanger<sup>36</sup>, who explained how Canada had tackled migration. He pointed out that Canada had a tradition of controlled systems of documented migration that had contributed to the construction of the nation and had strengthened the economy and culture of political institutions and of society in general. Canada identified itself as a multicultural nation and had realized that, for the purposes of studying international migration, there was a need to leave aside differences between sending, transit and receiving countries and understand that all countries of the hemisphere were “migration countries”. The Canadian approach to migrant trafficking had consisted of a number of initiatives at the national and international levels.

At the international level, the Canadian Government had been closely involved in all stages of the negotiating process for the United Nations Convention against Transnational Organized

<sup>36</sup> Immigration Programme Manager at the Canadian Embassy, Chile.

Crime and its supplementary protocols, especially the Protocol regarding trafficking in persons. Canada had signed the Convention and its Protocols in December 2000 and had proceeded to ratify them in May 2002. Since then, the country had taken other initiatives against trafficking in persons: Canada's International Development Agency (CIDA) had funded a number of projects intended to address the problem of human trafficking and smuggling, primarily focusing on women and children. Under the auspices of the RCM, Canada had: (a) provided funding for an IOM and Casa Alianza pilot project for the voluntary repatriation and social reintegration of child victims of trafficking in Honduras; (b) supplied technical assistance for the review of Costa Rica's migration legislation and the inclusion of provisions to deal with the issue of human trafficking and people smuggling; (c) jointly organized (with the Government of El Salvador) a seminar on migrant women and children in San Salvador; and (d) encouraged studies on migrant trafficking in conjunction with the governments of Central America and the Dominican Republic.

As far as national initiatives were concerned, the speaker pointed out that the Immigration and Refugee Protection Act (IRPA) had come into force on 28 June 2002. The Act constituted the first complete overhaul of immigration law in over 20 years. The achievements of the Act included making trafficking an offence for the first time ever, with severe penalties for those convicted; penalizing the use of fraudulent documents for entering or remaining in Canada; introducing penalties of fines and imprisonment for those employing a foreign national without a work permit; and, establishing that victims of trafficking could request to remain in Canada based on humanitarian considerations. In accordance with the United Nations Convention on the Rights of the Child, the best interests of the child were considered in the context of applications for permanent residence. In addition to the Act, the Canadian Government had also set up an Interdepartmental Working Group to develop Canada's position with respect to the text of the Protocols against Smuggling and Trafficking during the course of their negotiation, and to assist in national efforts to combat trafficking in persons. Canada had set up a number of programmes to provide health care and legal assistance to victims of trafficking and to train authorities —such as the Royal Canadian Mounted Police— in IRPA. Canada had also implemented a “one person, one passport” policy in order to prevent the trafficking of children. The Canadian representative added that new passports, visas and residence permits had been designed with modern security features.

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Canada's new migration strategy was based on the understanding that the border was not only a line marking the limit of a sovereign territory, but any point at which the identity of a traveler could be verified. That was what the speaker referred to as a multiple borders strategy.

To conclude, he reiterated his Government's willingness to continue the fight against trafficking in persons and smuggling while maintaining its obligations to refugees and legal immigrants. He encouraged the various States represented to sign, ratify and implement the United Nations Convention against Transnational Organized Crime and its supplementary protocols.

#### **(b) Melba Martínez, Programme to combat and prevent people smuggling**

Melba Martínez<sup>37</sup> began her presentation by describing Colombia's experiences in combating human trafficking and smuggling. Colombian law protected fundamental rights of the individual by prohibiting slavery and forced labour. Law No. 747 on human trafficking and people smuggling, adopted on the 19<sup>th</sup> of July 2002, classified the offences of human trafficking (carried out domestically or with a view to taking the person outside the country), forced labour, servitude and slavery-like practices. The Law also classified as an offence migrant smuggling, which was associated with facilitating, promoting, encouraging or financing people's entry or exit without complying with the legal requirements. The Law was based on the United Nations Convention against Transnational Organized Crime and its supplementary protocols, which had been signed by

<sup>37</sup> Director of Consular Affairs and Colombian Communities Abroad (Administrative Department of Security-DAS) Ministry of Foreign Affairs, Colombia.

the Colombian Government in December 2000 and subsequently tabled for ratification by Congress. In addition to the internationally recognized concepts, the Law also included the use of “couriers” to transport illegal substances or launder money as a way of trading in human beings.

Migration, and human trafficking and smuggling in particular, had become one of the Government’s main concerns, given that the phenomenon promoted negative perceptions of migration and migrants, which made the latter’s lives more difficult. It was also undeniable that illegal migration was increasingly carried out with the assistance of transnational organized crime.

The Colombian Government was associated with regional and subregional processes such as the Andean Community, the Regional Conference on Migration and, of course, with the commitments undertaken at the Third Summit of the Americas and with European countries and international organizations such as IOM, the United Nations Development Fund for Women (UNIFEM) and the United Nations Office for Drug Control and Crime Prevention (ODCCP).

At the national level, measures adopted against human trafficking and people smuggling involved various Government departments:

- The responsibility of the Ministry of Justice in terms of migration was to design comprehensive strategies and policies to protect personal liberty, promote formal and alternative access to the legal system, streamlining of current laws and the formulation of regulations.
- The Ministry of Foreign Affairs had three departments that were specifically linked to the subject:
  1. Directorate of human rights, whose work included proposing Ministry policy in terms of human rights, constant follow up of concrete cases and providing impetus for issues relating to women and children in international forums and in the context of bilateral relations with other States and with relevant national institutions;
  2. General directorate of international cooperation, whose objectives were linked to directing, promoting and coordinating collaboration with the international community. Particular importance was attached to the protection of children’s and women’s rights as priority issues of foreign policy;
  3. Directorate of consular affairs and Colombian communities abroad (Administrative Department of Security-DAS), whose main function was to provide assistance to Colombians abroad, with a view to protecting their fundamental rights.

The speaker explained that the Colombian Government would be tackling illegal immigration, migrant trafficking and people smuggling with preventive, remedial and punitive measures.

The remedial actions included awareness-raising programmes for authorities and officials who were directly or indirectly involved in preventing, suppressing and punishing trafficking. That also involved passing on such awareness and channelling the wish of the civilian population (in the form of non-governmental organizations, private industry, academia and education) to be involved. The aim was to establish a solid network of public and private entities for the purposes of devising, implementing and assessing strategies to prevent, tackle and punish people smuggling and regularize (in the first half of 2002) the situation of all foreign nationals who had entered the country prior to the 31<sup>st</sup> of December 2000. Issuing a Colombian travel document to those who were otherwise unable to obtain one was an attempt to facilitate the voluntary return of migrants to their country of origin or their move to a third State. The speaker also mentioned the introduction of

guidelines so that lawyers in consulates could provide legal advice to Colombians abroad in application of Law 76 of 1993; a telephone line set up to inform travelers of their rights and possible dangers when abroad; an icon for people smuggling on the web site of the *Cancillería*; the strengthening of contact with Colombians abroad to compile the impressions and experiences of consulate officials and training in the responsibilities of foreign service and in respect for the Colombian community and users in general.

Actions of a similar ilk include the entry into force of the agreement Colombia had recently signed with Spain to regulate and control the flow of migrant workers, as a result of which almost 900 Colombian workers had found employment in Spain. Colombia had signed a Permanent migrant statute with Ecuador that was being adopted as law. The country was also participating in the Andean Community's work to reform Decision 116 on migrant workers and working with IOM on the return of abandoned minors, smuggled migrants and female victims of trafficking.

Preventive activities included the following: a social plan financed using resources obtained from a policy of restraint and budget cuts; the Interinstitutional committee to combat trafficking in women and children, set up by Decree 1974 of the 31<sup>st</sup> of October 1996 in order to make recommendations and coordinate activities to develop governmental policy on preventing and suppressing trafficking through short, medium and long-term actions aimed at controlling, rehabilitating and reintegrating victims into society and; the setting up in 1995 of the Interinstitutional committee for assisting Colombians abroad, which was the permanent advisory body of the Ministry of Foreign Affairs and was responsible for recommending to the Government policies for assisting Colombians abroad and proposing preventive campaigns or ones to raise awareness of their human rights and social value. The National Police had played an important role in prevention and the *Grupo Humanitas* had been set up as a forum for discussion.

Other prevention activities had included awareness-raising campaigns in conjunction with various partners. A migrant's information centre had been set up at Bogota's El Dorado airport in order to offer citizens guidance in migration matters. The setting up of Casas de Justicia (houses of justice) was another example of prevention and victim assistance, the aim of which was to promote community justice by concentrating all municipal and national legal authorities in the same place, especially in areas that suffered the most from marginalization and conflicts. In conjunction with the Colombian Agency for International Cooperation (ACCI), there was also a project to establish social networks to prevent human trafficking for sexual exploitation in eight municipalities of Colombia's coffee-growing region (*eje cafetero*).

As a result of punitive actions involving the National Police, Administrative Department of Security (DAS) and Interpol, criminal gangs had been identified, legal proceedings brought and transportation companies (or fishing boats or owners/shipping agents) forced to bear the cost of returning any passengers or crew rejected by the migration authorities to their country of origin or a third country. Other results of such activities were the instrument drafted by the *Fiscalía General de la Nación* to register cases of human trafficking and training courses for the capital's special units on opinion evidence and the scientific and technical handling of judicial decisions. The DAS had also set up a system for exchanging intelligence on criminal networks specializing in human trafficking for the purposes of sexual exploitation.

The speaker concluded by saying that all those efforts were insufficient since organized crime was far ahead of the State. Hence the Government's conviction that it could only truly control human trafficking through continuous efforts.

**(c) Victor Wong, Globalization and migration-Canada's response to the Chinese boat refugees**

Victor Wong<sup>38</sup> said that, in such a period of rapid economic, social and political change, the world continued to witness the increasingly harsh response of States to the arrival of migrants. Migrants were people fleeing difficult circumstances at home and trying to survive by chasing the paths of market economies. Their under-valued labour served to feed those market economies, yet recipient States considered that their migration threatened the ideology of the new economic order and therefore had to be criminalized. In the aftermath of the 11<sup>th</sup> of September 2001 and the association of immigration and security measures in the Americas, the connection between globalization and migration had become much more apparent. States believed they needed to control migration as part of the globalization agenda.

He pointed out that there was more freedom for the movement of commodities, goods and services, information and capital than for the movement of people. He wondered since when it had been illegal to be a human being. The international community recognized the right to leave a country but not the right to enter another. Laws were in place to selectively restrict the movement of people. As a result, countries had responded to irregular, unexpected or spontaneous migration with inadequate policy instruments, especially at the local level. The visa application system in Canada had been established purely to enable the State to control the movement of people from certain countries, which was inherently discriminatory.

The Vancouver Association of Chinese Canadians was an anti-racism and human rights organization formed in 1992 that had assisted over 1000 Chinese refugees and refugee claimants. Canadian foreign policy had been not to return people to countries that abused human rights: countries like China. From 1994, however, Canada had begun to deport Chinese refugees who entered the country illegally. VACC and refugee groups lobbied the Government to introduce the Deferred Removals Orders Class (DROC) programme that allowed refused refugee claimants with three years residency to apply to remain in Canada. Some 5,000 people had been accepted under the programme and had gone on to work and set up small enterprises, in other words to produce and participate in the growth of the Canadian economy.

However, the case in which the VACC had been most involved was the arrival of 599 boat migrants at the Canadian coast in summer 1999. According to the speaker, the Canadian Government had decided to treat the migrants like criminals, without taking account of the factors that had made them leave China or the perilous nature of their long journey. The refugees aboard the first ship had not make a refugee claim until a week after their arrival. With the arrival of the other three boats, the Canadian Government had adopted a harsher stance, having the adults detained, preventing relatives residing in Canada from sponsoring the migrants and blocking 110 people from making a refugee claim, which was illegal. While the refugee cases were being processed, the migrants had been kept in detention, guarded and presented to Canadian society as criminals. That had caused xenophobic reactions among the local population who rejected the migrants. Terms like "economic migrant", "illegal immigrant" and "bogus refugee" had been used interchangeably to discredit and criminalize the boat refugees, without considering that they had all been victims of people smuggling. Some of the migrants had provided evidence of religious and other forms of persecution or enforced sterilization (as a result of the 'one child' policy). Many migrants had been detained for 17 months, 30 had been granted refugee status, 300 had been deported to China and the rest had been accepted as residents after more than one year in prison.

There was a need to redefine the term "refugee". According to the 1951 Convention, a refugee was someone who had a well-founded fear of persecution based on one of five grounds-race, religion, nationality, political opinion, or membership in a particular social group. But that

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<sup>38</sup> Executive Director of the Vancouver Association of Chinese Canadians (VACC), Canada.

definition excluded economic and environmental factors that gave rise to the displacement of large numbers of people. Such exclusion was not adequately addressed by Canada's current immigration and refugee system. A person could be both a refugee and a migrant at the same time. However, it was the person's economic and social status that carried weight when deciding on the basis of the legislation that had come into force on the 28<sup>th</sup> of June 2002. The legislation, called Bill C-11, included even more punitive measures for those entering Canada without documentation.

Mr. Wong said that Canada was closing the front door and forcing people to use the back door. Canada imported low-cost products but did not want the workers who produced them. The Government was being a party to a new form of slavery by taking advantage of low salaries in non-industrialized countries, thereby making migrants more vulnerable to exploitation by traffickers and smugglers in their attempt to find a better standard of living in other countries. It was also irresponsible of Canada not to acknowledge its own role in creating conditions of poverty as a result of globalization.

Lastly, the speaker presented a series of recommendations to the Canadian Government: creating a system that allowed migrants to work and contribute to society; ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; establishing, in coordination with other industrialized States, an outpost in Fujian province; offering more employment visas in order to regularize the migration; recognizing poverty as a human rights issue and the role of the Canadian economy in creating poverty in non-industrialized countries that were sources of migration; reforming the procedures for detaining, criminalizing, rejecting the refugee applications from and deporting migrants in order to avoid repatriating people whose fundamental rights were threatened in their country of origin and making migration policy instruments more welcoming and less exclusionist.<sup>39</sup>

## 2. Comments

The commentator for the present block was Lin Lean Lim<sup>40</sup> who stated that trafficking in human beings, in particular in women and children, had emerged high on the international, regional and national agendas in recent years, because of the alarming increase in its incidence and the sophisticated mechanisms used. Despite States' efforts to combat the problem, it was far from being resolved, partly because the initiatives and instruments addressed its effects rather than the root causes. The commentator concentrated on (1) law enforcement responses to migration and (2) the elements of an integrated, multisectoral approach addressing both the supply and demand sides of trafficking.

With reference to the first theme, she made a distinction between trafficking and smuggling according to the definitions of the Palermo Protocols. Smuggling did not involve coercion and the smuggled migrant violated the laws of the State by entering illegally. Furthermore, smuggled migrants were not from the poorest families or communities because they were able to pay for the journey and the services of the smugglers. In trafficking on the other hand, migrants were forced to leave their country of origin as a result of violations of their individual and fundamental rights. Victims of trafficking tended to be from the poorest and most marginalized communities and families. Making the distinction between an undocumented migrant and a victim of trafficking (or refugee) was a huge responsibility and involved a long and unclear process. At times, trafficked persons did not even see themselves as victims. Crudely expressed, the migrant worker could prefer exploited labour conditions in a wealthier destination country to impoverished freedom back home. Furthermore, reporting their exploitation would cause them to be immediately deported. In other words, their "rescue" would signify their "capture". They therefore appeared as "hostile" victims

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<sup>39</sup> The delegation of the Canadian Government made a statement that was reproduced in the annex containing final conclusions of the Conference.

<sup>40</sup> Director of the Gender Promotion Programme (GENPROM) of ILO.

and witnesses and were unlikely to cooperate in prosecuting traffickers. The authorities were therefore not concerned with protecting their rights, and saw them primarily as witnesses, and as tools of law enforcement.

In most States, laws against trafficking were insufficient and unsuitable. For example, laws against prostitution or against the exploitation of prostitution of others were the laws most frequently being used to prosecute traffickers. It would be much clearer and more effective to have specific legislation setting out a criminal offence that covers trafficking for all purposes —not just sexual exploitation but all forms of forced labour. Good examples were the United States Trafficking Victims Protection Act of 2000 and the Canadian Immigration and Refugee Protection Act of 2002. It was also worth making the point that legislation alone was not enough. It was vital to sensitize authorities, so that they could identify and protect victims of trafficking, and to combat indifference, corruption and collusion with traffickers and members of organized criminal gangs.

As for the second theme, a multi-pronged approach was essential given that trafficking was not one single event but a set of circumstances involving a wide range of actors. The factors behind the supply of and demand for trafficked persons had to be tackled. The aim should not be simply to “rescue” people out of their situation and return them to their country and the same conditions from which they had originally left. The answer lay in making options available to trafficked persons, providing them with services and support and empowering them to make decisions over their own lives without any financial or social coercion. Also, migration laws should consider: (a) labour supply and demand both in countries of origin and destination; (b) discrimination that made women and children more vulnerable; (c) the demand for forced labour and; (d) the growing sex and entertainment industry that required unregulated migrant workers. Preventive actions were also necessary such as development programmes in migrants’ communities of origin to combat their vulnerable situation resulting from poverty and marginalization.

She mentioned some of the good practices learnt at the practical level:

- Organize the population, especially those in a vulnerable situation, so that they were aware of their rights, employment options and in order to encourage the reintegration of victims of trafficking into their communities.
- Establish more effective mechanisms for improving coordination —at the community, national and international levels— of the exchange of information for the purposes of combating trafficking.
- Involve workers’ and employers’ organizations in addition to non-governmental organizations.
- Implement education programmes for girls at risk in conjunction with their parents in order to change cultural attitudes towards education for girls and offer them scholarships or financial support.
- Set up sustainable programmes for marginalized populations involving all community stakeholders: government development agencies, the private sector, employers’ and workers’ organizations and the vulnerable groups themselves in providing improved access to credit, technology, markets and mechanisms for savings and social protection schemes.
- Develop national, as opposed to local, strategies since the latter were ineffective in the long term.
- She concluded by reiterating some of the points made by Mr. Taran at his presentation concerning the more elements for effectively combating trafficking:

- An informed and transparent labour migration admissions system based on realistic labour market assessments in countries of origin and destination —not just in terms of the needs of State sovereignty— to create legal labour migration channels would reduce both trafficking and smuggling;
- The acceptance of proposals based on basic human rights and labour standards established by the United Nations and the ILO;
- The promotion of opportunities for women and men in all countries to obtain decent and productive work in conditions of freedom, equity, security and human dignity.
- The creation of gender sensitive policies and programmes in response to the vulnerable conditions of women and girls;
- Promotion of the principle of non-discrimination and the fight against xenophobia.

### **3. Highlights of the unit**

- It was vital for public policy to make a clear distinction between the criminal activity of human trafficking and its victims and migratory phenomena, given that the increases in human trafficking and people smuggling had given rise to negative perceptions and attitudes concerning migration.
- It was also necessary to distinguish clearly between people smuggling and human trafficking. The United Nations Convention on Transnational Organized Crime and its protocols had made substantial progress in those definitions.
- In order to combat the above-mentioned phenomena, greater attention should be given to their causes rather than their effects, notwithstanding concern for victim support, especially in the case of women, children and adolescents. Furthermore, the perpetrators should be severely punished.
- Different attention should also be given to people whose movements were the result of conditions in which their lives had been directly threatened and their rights violated.
- There were many levels of intervention for combating trafficking. They could be based on the promotion and adoption of appropriate legal instruments at both the international and national levels. Dialogue and cooperation between nations had proved its worth and its potential contribution to such progress.
- National legislation needed to be brought into line with the commitments undertaken by States in the context of international law. National legislation, which was often insufficient, could benefit from the adoption of principles protecting the fundamental rights of individuals, the eradication of any discriminatory and xenophobic practice and the prohibition of slavery and forced labour.
- It was important for the countries of the region to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which could become a reference framework for the adoption of transparent national systems for the admission of migrant workers and of labour standards laid down by international organizations such as ILO in the interests of decent production work conditions in a context of freedom, security and human dignity.
- In terms of protection and assistance, the region had had valuable experiences aimed at giving priority to certain vulnerable groups such as people who agree to voluntary repatriation and the social reintegration of women and child victims of trafficking and physical and mental health programmes for victims of forced displacement.

- On a more operational level, some countries had adopted specific approaches to bring security standards at borders and entry points into line with the precautions required to avoid trafficking and smuggling, particularly that of children, by improving traveller-identification systems.
- As shown by experience, it was necessary to identify and coordinate the work of various public institutions whose responsibilities were directly or indirectly linked to actions aimed at combating human trafficking. One way of organizing their tasks was to distinguish remedial, preventive and punitive actions, thereby classifying and focusing actions in terms of: (a) communicating information to migrants and potential migrants; (b) raising awareness among public officials and key social sectors; (c) controlling migratory flow; (d) regularizing the situation of migrants; (e) documentation for migrants or those applying for documents; (f) consular protection, particularly for victims of abuse and trafficking; (g) programmes for victims' return and repatriation; (h) effective actions to penalize indifference, corruption and complicity of law enforcement and other officials with human traffickers; (i) support for the development of studies and research into the phenomenon of trafficking and; (j) exchange of information.
- The above showed that laws were insufficient. It was necessary to make efforts to raise the awareness of authorities in identifying and protecting victims of trafficking.

## Unit III-B. Prevention and assistance (best practices and future activities)

*“The key to approaching human rights was the decriminalization (protection) of victims and the criminalization (prosecution) of traffickers in order to restore the appropriate balance as far as human rights are concerned”.*

**Moderator:** Florizelle O’Connor, Human Rights Consultant, Ministry of National Security and Justice, Jamaica.

### 1. Speakers

#### (a) **Jorge Bustamante, A virtual contradiction between international migration and human rights**

The first presentation was given by Jorge Bustamante<sup>43</sup>, who presented a three-part analysis of migration at the border between Mexico and the United States.

In the first part, he described the border between the two countries, which he said had been particularly affected by the tragedy of the 11<sup>th</sup> of September 2001. Stricter control over everything that crossed the border had resulted in many changes to border life, which had previously been marked by an intense interaction of over twenty million people from both sides of the border. It was understandable that a country whose sovereignty has been violated as viciously as that of the United States on the September 11<sup>th</sup>, wanted to make sure that its international borders were protected regardless of how good the relations were with its neighbouring countries. Taking care of the integrity of national sovereignty was certainly not something that a country could delegate to a neighbouring country. In that sense, an international border could not be the same during conditions of war as during conditions of peace. Both Mexico and Canada would have to wait until the

<sup>43</sup> Professor and Researcher at El Colegio de la Frontera Norte de México, Mexico.

conditions of war declared by the president of the United States had been significantly modified to see border life restored back to normal.

The U.S.-Mexico border region had been a place of convergence of the best opportunities for economic growth that the process of globalization and trilateralization had brought to the three NAFTA countries. That optimistic scenario was one of the many casualties of the terrorist attack. The border population had to make many new adjustments as a different meaning of the border emerged from the crisis, although vital needs would not change. They still had to eat, provide for their families, barter and exchange, produce together the rules of the border game and seek the cooperation of neighbours for those vital needs that geography had made them share. Those needs would become more concrete, more evident to the people of both sides.

In the second part, professor Bustamante spoke of the history of migration in the northern border of Mexico. For many years in Mexican government circles, there had been the notion that the bracero agreements were a model to be followed to regulate the migratory situation. That notion had derived from the terms of the first bracero agreement signed by the two governments in 1942. The notion of emigration to the United States as an “escape valve” had become a predominant ideology of the Mexican government about emigration to the United States, that had obscured the realities of exploitation and violations of human and labour rights of the Mexican immigrants in that country throughout the “bracero period” (1942-1964). After 1964, the Mexican government had lobbied for renewed versions of the bracero agreement in the light of the difference between the written terms of the agreements and the realities lived by the Mexican migrant workers.

The ideology of the escape valve had inhibited the Mexican government from defending or actually protecting the Mexican migrants in the United States. Far from being a solution to the problems associated with migration between the two countries, the bracero agreements had become concomitant to the rise of undocumented migration.

Such a position of the United States had prompted a delayed reaction from the Mexican government during the presidency of Carlos Salinas (1988-1994): expressing opposition to the “criminalization” of undocumented immigration from Mexico, which had been considered to derive from a de facto international labor market. Operation “gatekeeper”, begun in 1994, had been designed not to stop, as one would expect from an immigration law enforcement agency, but to deviate the route of entry of undocumented immigrants from Mexico into the United States toward areas away from the visibility of urban eyes like those of San Diego. “Operation gatekeeper” had been designed on the assumption that undocumented immigrants would be discouraged by the risk of death presented by the areas of crossing to which they had been diverted, such as the mountainous terrain east of San Diego, the deep irrigation channels, such as the All American Canal, or the inhospitable desert areas between California and Arizona.

Risks of dehydration in the desert lands, hypothermia during the winter months or drowning in the irrigation channels had not discouraged the inflow of undocumented immigrants but had been reflected in the increase in the number of deaths.

President Vicente Fox had said that the deaths of migrants at the border would be “intolerable” and proposed an open border for Mexican migrants after sufficient closing of the wage gaps between the United States and Mexico. The idea had not been accepted in the highest circles of the U.S. government but it certainly made Mexicans think about it. None of the U.S. presidents before George W. Bush, including his father, had deviated from the notion that the immigrants were criminals. The position taken by president Bush represented a significant change of U.S. immigration policies because it had included recognition, for the first time, of U.S. labour demands as a factor that shaped the phenomena of immigration of Mexicans to the United States. His speech had also included references to the human and labour rights of the Mexican immigrants in the United States and the need to negotiate a bilateral solution to the immigration question.

The progress made in bilateral negotiations on migration had been made public one week before the events of the 11<sup>th</sup> of September 2001. Those events could only exacerbate the difficulties of the negotiations and of any other matter pertaining to the realm of the sovereignty of the United States and that of its neighboring countries. There were however important implications for the Mexican migrants. The option that would be the most convenient for them was “amnesty”, a term not accepted by the Mexican Government, because it alluded to a pardon granted to criminals by the United States Government.

Public debate on Proposition 187 had been marked by the court’s main argument in its first, and again in its final, decision about its unconstitutionality, namely, its violation of the “supremacy clause” (immigration matters had been the exclusive jurisdiction of the federal government). This had perhaps been the main reason why there had not been an in-depth discussion of Proposition 187’s basic premises but a debate on biased perceptions, tainted by racist and xenophobic ideologies, and that its basic provisions represented instances of “institutional racism” against people of Mexican origin, identified as such by the colour of their skin.

The speaker said he would like to predict that the question of migration between Mexico and the United States would return to where it had been before the 11<sup>th</sup> of September 2001. In support of that, he mentioned market forces, to the extent to which Americans continued to be uninterested in doing the jobs Mexican migrants did in the United States, for the wages they received. He then quoted the American economist, Alan Greenspan, who had said that the United States needed more people to produce more and to obtain more taxes if its economy was to expand.

The third part of the presentation was given over to the dialectics of the vulnerability of international migrants. For professor Bustamante, the basic thrust of the analysis was that a social process existed that resulted in a condition of vulnerability of international migrants as subjects of human rights. The dialectic of migrants’ vulnerability —as a social process— implied, (1) a socio-legal inclusiveness that arose out of a dialectical process between two legal notions of sovereignty and, (2) the social construction of conditions of vulnerability of international migrants who had been displaced by the dynamics of international relations arising from the globalization of international markets.

That was to be understood as a dialectical process that began when a country, exercising its sovereignty, duly committed itself to adopting an international standard of human rights and remade that standard constitutionally into a law of the land. That exercise of sovereignty became (A) dialectically opposed to another exercise of the same legal nature, (B) that which made a constitutional distinction between nationals, on the one hand, and immigrants as foreigners, on the other. Those two exercises of sovereignty described as dialectically opposed, became interrelated in the practice of international relations arising from the phenomenon of globalization. Thus, the “thesis” in the dialectical process was (A), and the “antithesis” was (B); although, historically, (B) had preceded (A).

The Hegelian notion of a dialectic process consisted of two opposite exercises of sovereignty, each with different objectives and opposed to each other as a *thesis* opposed an *antithesis*, and out of which emerged a *synthesis*. Implicit in that dialectic was the inclusiveness of two cognitive domains, namely, law and sociology. One was of a legal or normative nature and the other of a social nature. The bridge between the two dimensions was the passage from a norm to actual human behavior in the empirical context of social relations.

Such inclusiveness was assumed in the allusion to a social process in which the main actors were those constitutionally defined as nationals but also as foreigners or immigrants. The main feature of that inclusiveness was the dialectical dynamic, energized by the international relations of globalization. In that context, the vulnerability of international migrants became the focus of a contradiction between, (A) a “classical” notion of the sovereign right of nations to define who was a national and who was not; as well as to control immigration by controlling their borders; and (B), a

“modern” notion of sovereignty susceptible of self-controls through a State’s sovereign decision to adhere to international standards of human rights.

European-Union style integration became a truly Hegelian synthesis of the dialectical opposition between (A) and (B), to the extent that it eliminated the inequalities between nationals and foreigners implied in (A). By the time the exercise of a sovereign right turned (A) into its opposite (B), the new notion of human rights had erased the previous inequalities between nationals and foreigners. The new product generated by the dialectical relations between (A) and (B), namely integration, implied that human rights applied equally to both, nationals and foreigners. Such was the meaning of the Schengen agreements.

Although such legitimate distinctions did not tend to explicitly place the foreigner in a subordinate position *vis-à-vis* the national, when they interacted socially within the receiving country, the national-foreigner duality was nevertheless very often transformed, or, socially constructed, into an object of *de facto* discrimination against foreigners by nationals.

There were therefore two different notions of sovereignty with dialectically opposite meanings. Such a dialectical opposition had been generated from the dynamics of international relations implied in the process of globalization. The paradox was similar to that implicit in all international agreements that became of a higher legal order than norms of internal legislation by virtue of the product of sovereignty *par excellence*, namely the Constitution.

**(b) *Francisco Rico-Martínez, The role of civil society in preventing and combating human trafficking***

The second speaker was Mr. Francisco Rico-Martínez<sup>44</sup> who, as a member of civil society, recognized the limitations of organizations such as his in influencing the main stakeholders in human mobility, particularly States and migrants.

However, civil society had experience and knowledge of human trafficking through the decades. Working with those affected by *coyotaje*<sup>45</sup> or human trafficking had been a great help. However, much remained to be done to research and quantify the phenomenon.

As part of globalization, seen as a cause of human mobility, that mobility was subject to the dynamics of extreme inequality between countries or subregions. That fact was at the basis of globalization and tended to heighten inequalities in particular situations.

States had the power to decide who entered their territories, to control people’s entry into the country and to take any coercive or prohibitive measures. However, such actions could be seen to contradict the notion that all human beings without distinction were born free, with dignity and rights. That was a basic concept in civil society’s actions in the area of mobility.

The increase in irregular forms of human mobility had occurred in direct proportion to the increased vulnerability of people in movement (particularly internationally) as a result of the activities of groups and individuals specializing in human trafficking and people smuggling.

He concluded by proposing actions that could be jointly implemented by States and civil society:

- Deepening joint analytical research between States and civil society on irregular forms of human mobility, with special emphasis on human trafficking and people smuggling.
- Carrying out in-depth analysis of the effect of macroeconomic policy on mobility.

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<sup>44</sup> Co-Director of the FCJ Hamilton House Refugee Project, Canada.

<sup>45</sup> Editor’s note: in various countries of the region, “*coyotaje*” was colloquially used to describe human trafficking and people smuggling.

- Creating joint campaigns between the State and civil society for potential at-risk migrants, with emphasis on their human rights.
- Establishing joint assistance and multidisciplinary training programmes between the State and civil society in order to develop national capacities and promote the process of a proper national migration process based on human rights.
- Organizing an anti-corruption programme with effective reporting and protection mechanisms.
- Increasing the number of joint emigrant assistance programmes that should integrate assistance, protection, victim tracing, help for returnees and the possibility of prosecuting traffickers and smugglers.

**(c) *Diego Beltrand, Human trafficking: a regional challenge***

Diego Beltrand<sup>46</sup> introduced many considerations and proposals for tackling human trafficking, which he identified as a challenge for the region.

In the light of the increase in the number of victims, the international community had drafted several instruments to combat the phenomenon including the United Nations Convention on Transnational Organized Crime, particularly its supplementary protocols on trafficking and people smuggling.

In May 2002, the United Nations High Commissioner for Human Rights had submitted to the Economic and Social Council a report on the Recommended Principles and Guidelines on Human Rights and Human Trafficking. The document served as guidelines for governments, and international or non-governmental organizations.

The trade in human beings involving women, men and children was known as human trafficking. That was the official United Nations term and had been adopted by international agencies such as IOM, the United Nations Children Fund (UNICEF), the Organization of American States (OAS), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Council of Europe, the European Union and various non-governmental organizations.

Human trafficking was a problem in every Latin American country and took place between countries and between continents. Those Latin American countries with a high incidence of training were Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua and Peru. Although that was not to say that the problem did not exist in other countries in the Americas. Destination countries in Western Europe were Austria, France, Germany, Italy, Netherlands, Spain and Switzerland. In Eastern Europe, destinations included the Czech Republic, Poland and the Russian Federation. Asian destination countries were Hong Kong, Japan, Singapore, Taiwan and Thailand.

Human trafficking was particularly prevalent in the border areas of South and Central American countries, with the United States and Canada being the main destination countries.

Beltrand felt that human trafficking should be seen from the point of view of human rights. Victims of trafficking were often treated like migrants who had violated migration laws and were therefore arrested, deported or treated like criminals. The key to a human-rights based approach was the decriminalization (protection) of victims and the criminalization (prosecution) of traffickers in order to restore the appropriate balance in terms of human rights.

Efforts should be directed at developing a national plan in each country of the region to work on domestic legislation, victim and witness protection systems and to create special teams within

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<sup>46</sup> Chief of the IOM Misión, Colombia.

authorities responsible for dealing with victims, particularly women and children. Efforts should also be made to develop evidence collection techniques using modern equipment for the purposes of tackling organized crime networks and to carry out information and awareness-raising campaigns on victims' rights and the human rights instruments designed to protect them. There was also a need for comprehensive national and local victim-assistance programmes that guaranteed a return to their place of origin. Those measures should be accompanied by medical, psychological, legal and educational assistance and professional training in a way that involved victims, their families, communities and societies for the purposes of providing assistance and prevention.

In conclusion, the speaker mentioned the following important points of the strategic plan:

- Adopting legislation to combat human trafficking in the region.
- Setting up victim—and witness—protection mechanisms.
- Preventing human trafficking.
- Providing up-to-date and comprehensive information about human trafficking.
- Creating a database system.
- Employing staff trained to deal with cases of trafficking.
- Protecting victims' human rights.
- Setting up special programmes for minors.
- Promoting social research.

## 2. Comments

During the round of comments, Carla Menares Bury<sup>47</sup> pointed out that it was vital to strengthen cooperation between governments. However, it was difficult to know where to start, given that many factors contributed to migrants' vulnerability.

Governments were responsible for protecting migrants' rights, and civil society also had an important role to play in that area.

She recommended developing a common framework based on legislation providing for prevention, protection and prosecution. Legislation should be comprehensive and the penalties should be the same in all countries. There was also the need to implement an action plan with a multidisciplinary approach.

The second commentator, Laura Langberg<sup>48</sup>, described the work of the Inter-American Commission of Women (CIM) in terms of trafficking in women and children for sexual exploitation. In the context of Mr. Bustamante's presentation, she highlighted the critical analysis of the historical role of the Mexican Government and society and their relations with migrants. As for Mr. Beltrand's presentation, she mentioned the important contribution of the plan of action included therein and said she hoped that OAS would be able to cooperate in its implementation. She felt that the plan of action should involve the private sector, particularly the tourist industry and mass media. She also suggested developing joint programmes between countries of origin, transit and destination and increasing the presence of civil society organizations at borders.

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<sup>47</sup> Senior Coordinator for International Programmes of the Office to Monitor and Combat Trafficking in Persons, U.S. State Department.

<sup>48</sup> Representative of the Inter-American Commission of Women (CIM/OAS).

### 3. Highlights of the unit

- The current process of globalization of international economic relations had aggravated tensions between States' sovereign right to regulate and control the movement of people across their borders and labour demand.
- Border regions were the perfect illustration of such tension. Besides labour relations, there was much interaction between historically linked, neighbouring populations that tended to virtually erase the formal limits established by States. Hence the importance of rethinking the notion of borders, not in their role as a separating restriction, but as a point of encounter and unison for societies with various affinities.
- The events of the 11<sup>th</sup> of September 2001 had obliged the United States Government to radically change its policies concerning national security and particularly the control of its borders with Mexico and Canada. In the long term, those changes could have an effect on other countries in the Americas and would probably have specific repercussions in border regions.
- Borders are environments where migratory processes were intensified, and human trafficking and smuggling were an integral part of border dynamics. Civil society had spent decades acquiring experience and knowledge about dealing with victims of trafficking. However, it was vital to develop further studies and quantify the problem.
- The increase in irregular forms of human mobility had occurred in direct proportion to the increased vulnerability of people in movement.
- The concept of migrant vulnerability implied the inherent contradiction between the traditional exercise of sovereignty—which identified and labelled them as foreigners not nationals—and a modern notion of sovereignty that was subordinate to compliance with internationally accepted human rights commitments and agreements.
- Such compliance required concerted action, the implementation of mechanisms for coordinating actions and exchanging information, and the impetus for standardizing legal frameworks for the development of similar practices in the fight against human trafficking and smuggling and migrant protection. It was also vital for any plan of action to have a multidisciplinary approach.



## **D. Report of civil society organizations and final panel with participation of guest speakers from civil society organizations**

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### **1. Report of civil society organizations**

A summary was made of the discussions held in the side meeting of civil society organizations which conducted activities in the area of the mobility of persons. Fundamentally, it was pointed out that migration movements in the Americas were increasing in scale and complexity and were the inevitable outcome of the deterioration in the socio-economic conditions in the countries of the region; those movements involved increasing numbers of women as well as new sectors, such as the urban population and more highly skilled segments. Human trafficking and smuggling had reached alarming proportions and both of those phenomena were attributed to the failure of the new economic models, particularly structural adjustment.

Other causes for concern were the armed conflict in Colombia, the militarization of the continent and its consequences on internal and international migration, and the impact of migration policies on human rights through the emphasis on restriction and the tendency to link migration with security issues. There were some positive trends, however, for example, the Mercosur Free Residence Agreement for the citizens of its member countries as well as those of Bolivia and Chile, although current policies ran counter to that aim.

The civil society organizations present at the meeting agreed categorically to reject the maintenance of policies of exclusion since they infringed human rights; they were opposed to the models of integration, such as the Free Trade Area of the Americas (FTAA), as they stated that its foreseeable result would be the impoverishment of the majority of people.

The civil society organizations urged Governments to endorse a set of recommendations on international law in the national spheres and in relation to the problems of human trafficking and smuggling (see appendix with report of the organizations).

## **2. Speakers**

### **(a) Reynaldo Bajraj**

Reynaldo Bajraj<sup>31</sup> made a statement in the context of the concerns, positions and activities of ECLAC. He said that, from a broad perspective, the Commission fulfilled its mission of collaborating with the Governments and peoples of Latin America and the Caribbean in their efforts to promote economic and social development and did not conceive of development as the application of recipes or schemes for growth. Development was seen as an institutional and cultural attribute of societies; it was linked to concerns for the social situation; that is, it was an attribute of the way in which the people of a country lived, of how they organized themselves, related to each other, were governed and lived together, since development formulas which one tried to impose on a social institutional and cultural structure of an underdeveloped country did not bear fruit.

According to the speaker, institutions were important for development; in particular, participatory democracy with respect for human rights was considered to be the bedrock of all other institutions. It referred principally to the participation of civil society in the public domain, understood to mean the formulation of well-founded individual opinions and the endeavours of non-governmental organizations (NGOs).

As one of the Commissions of the United Nations Organization, ECLAC was also interested in international relations. In that respect, there were two interrelated issues: the prevalence and defence of peace among nations and international migration, since governance of cross-border movements of persons was essential for the observance of their rights and for peace.

Lastly, speaking on behalf of ECLAC and CELADE, Mr. Bajraj expressed thanks to participants for their contributions and for the relevance of their statements throughout the Conference.

### **(b) Elizabeth Thomas-Hope**

The second participant in the panel was Ms. Elizabeth Thomas-Hope,<sup>32</sup> who gave a presentation on migration in the Caribbean. She said that capital had always played an important part in the movement of persons from that region. The Caribbean population had always had a high propensity to migrate, a fact seen throughout history: from the nineteenth century, during the independence processes, throughout the twentieth century and up to the present. The peoples of the Caribbean had experienced migration processes that had held an important place in their make-up and social dynamic.

People were ready to migrate whenever and wherever the opportunity arose and that tendency was intensified in countries with high levels of poverty in the Caribbean, whether those opportunities arose within or outside of the legal immigration framework, which made migrants more vulnerable.

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<sup>31</sup> Deputy Executive Secretary of ECLAC.

<sup>32</sup> Professor at the University of the West Indies, Jamaica.

Currently, the groups of migrants in the Caribbean who were cause for concern in the context of trafficking and human rights were the following:

- Irregular migrants, in particular women and children who were victims of trafficking for the sex trade.
- Deportees, including regular and irregular migrants who were the object of involuntary repatriation to the Caribbean as a result of a sentence for criminal acts or administrative deficiencies.

Irregular migrants were exposed to a number of problems; in particular they risked suffering abuses by various agents, including officials and government agents and employers and various intermediaries and traffickers who operated along their route and throughout the migration process. The sending countries of irregular migrants were those that recorded the lowest economic levels and wide disparities in the distribution of wealth. At the same time, the geographic proximity of the Caribbean to the United States made it a strategic transit point for drug-traffickers and irregular migrants on their way to that country.

Irregular flows of migrants included the following categories:

- Movements of persons who crossed the border illegally, including asylum-seekers who were not considered “genuine refugees”.
- Persons who entered the country legally, but who overstayed the time permitted on their visa.
- Persons whose residence or citizenship was altered by changes in laws and government regulations.

Irregular migration flows in the Caribbean involved immigrants as well as emigrants; such flows were both intra- and extraregional and the three main patterns were the following:

- The illegal entry into the Caribbean of persons from other regions, frequently with the intention of moving on to the United States.
- Migrants bound for countries outside of the region, mainly the United States, Canada and Europe.
- Migrants who moved from one country to another within the region, mainly to the tourist destinations.

Currently, the largest numbers of irregular migrants in the Caribbean were those who sought to enter the United States or another Caribbean country (as a transit point) by sea. For that purpose, they frequently used boats operated by smuggling rings. The exact volume of persons mobilized was unknown, but data showed the dominance of Haitian migration between 1982 and 1994. In subsequent years, there was an increase in migration by Dominicans and Cubans. The best known example was that of Haitian boat people, who were not admitted as refugees —between 1992 and 1994— having been intercepted by United States coast guards and forced to return to their country.

Ms. Thomas-Hope said that the condition of migrants was determined by the mode in which they entered the other country and by the policies relating to asylum, residence and citizenship. Generally speaking, irregular migrants were persons excluded from legal migration channels and who suffered various consequences. In the Caribbean, the problem of stateless children had increased; there were various ways of regularizing their stay in a country and obtaining residency, but those could be changed at the discretion of Governments, which meant that many migrants had no form of security, since their irregular status also meant a lack of security, which exposed them to situations of physical and emotional abuse; official sanctions, such as detention and deportation; the risk of extortion at the hands of smugglers, traffickers or authorities; lack of access to State services,

in particular health services, and the risk of contracting sexually transmitted diseases. All of those conditions led to a negative image of irregular migrants, which resulted in the discrimination with which they were treated in destination societies.

She also referred to international sex trade organizations which were responsible for trafficking young persons, especially women and girls and taking them to tourist destinations within the region and to various cities in Europe and North America. The Dominican Republic was the country of origin of most sex workers who were victims of trafficking. According to some estimates, there were slightly over a thousand Dominican sex workers in Spain and 3,675 in Switzerland.

Another cause for concern were the deportees. Between 1994 and 1998, 22,397 persons had been deported to the Caribbean from the United States, Canada and the United Kingdom. Of that figure, 16,135 had been deported for criminal activities, while 6,262 had been deported without having committed any crime. She reiterated that persons from the Dominican Republic were the largest group in that category, followed by persons from Jamaica, Haiti, Trinidad and Tobago and Guyana. One of the problems was that the deportees had resided in another country for a long time—in many cases since they were children—and their deportation was processed on an individual basis, that is without any of their close family; for that reason their readaptation to their native country was very difficult because they had no job or social networks to support them.

The economic disparities between the countries of origin and destination of migrants, as well as among countries of the Caribbean was a key factor in migration; as long as such disparities existed, migration could not be controlled and the more authorities of the countries of destination restricted admission, the greater the risk run by migrants of falling into the networks of smugglers and traffickers. There was a link between the low rates of gross domestic product (GDP) and migrant sending countries, clear examples being Haiti, Dominican Republic, Jamaica and Guyana. Conversely, there was a link between a high GDP and migrant receiving countries, such as Bahamas, Turks and Caicos Islands, United States Virgin Islands and Barbados.

One could not ignore the importance of remittances for migrant sending countries and irregular migration should be understood as a trend that occurred because there was a demand for cheap labour and sex workers in the destination countries; moreover, there were economic conditions that led people to migrate in search of a better quality of life. The high numbers of irregular migrants and the scale of trafficking in persons in the Caribbean reflected the high tendency to mobility especially towards the United States and Europe. Migrants were very prone to accept the offers of the numerous agents who operated illegally. Poverty exacerbated the belief that migration was an alternative avenue for finding opportunities for those who left and for receiving remittances for those who stayed.

**(c) *Fanny Polanía***

The next speaker, Fanny Polanía,<sup>33</sup> explained that the organization she represented was international in scope and was dedicated to protecting victims of trafficking through activities conducted on several continents. Those activities encompassed four fundamental dimensions: legislation, prevention, assistance and research.

In the field of legislation, the Global Alliance Against Trafficking in Women promoted the harmonization of laws within countries, since the basis for the development of international trafficking was internal trafficking. Next, it was necessary to define trafficking and to explain what it was used for and how it operated.

Thus, the Global Alliance promoted the review of migration policies including the issue of work and the problems that could arise in the future, for example the trade in human eggs and

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<sup>33</sup> Representative for Latin America of the Global Alliance Against Trafficking in Women.

protection programmes for the victims and witnesses of trafficking. The positive consequences of regularization of migration would be orderly and controlled migration and reduced vulnerability for migrants.

Under the heading of prevention, one should also include the issues of migration, international organized crime and protection of human rights. Simple measures were proposed, including the distribution of posters, flyers or television and radio commercials, and also improving the attention of authorities in order to protect victims and prosecute the traffickers. She stressed that it was also necessary to address the demand for trafficking, since both the traffickers and the victims were products of society.

Assistance should not be limited to just setting up shelters for the victims, but should include medical attention, psychological treatment and help in finding employment. Although the prevention of sexually transmitted diseases, mainly acquired immunodeficiency syndrome (AIDS), was necessary, those illnesses were not necessarily the most important. Persons who had been shut away in darkened places often suffered problems with their eyes, isolation, mental imbalances and, sometimes, conflicts in terms of their own sexuality. One should consider that shelters were highly vulnerable places and thus the stay in them should only be temporary.

Lastly, with respect to research, she pointed out that one should address the needs of the State, civil society and victims. Studies were needed on the economic impact of trafficking, whether for the sex trade or forced labour, in both the formal and informal sector. In that respect, it was indispensable to have well-coordinated national and regional plans and to make use of the experience acquired in countries of other continents.

**(d) Mario Santillo**

Mario Santillo<sup>34</sup> took the floor and stated that, under normal conditions, no person wished to migrate. It was in economic and political crisis situations that migrants left their country to seek better working, hence better living, opportunities. The current situation in the world was based on the contradiction that existed between the need for labour in the developed countries and the closure of borders in those same countries. Restrictive policies on migration gave rise to illegal migrations and were not in keeping with the provisions of international agreements.

In some countries, migration was often recognized as a contribution to development and culture, while in others it was perceived as an invasion and a threat. Some advances had, however, been achieved in that field; for example, the outcome of the meetings of regional forums on migration and some initiatives taken by Mercosur member countries, involving, in both cases, regional proposals which demonstrated a concern for the situation of migrants.

According to Mr. Santillo, the mass media frequently created negative stereotypes of migrants, alleging that they took jobs away from nationals, took up hospital beds and occupied space in classrooms. In other words, they presented them as a burden on the State, when, in reality, the facts were quite different: indeed, migrants accounted for less than 5% of the total population in most countries. That negative attitude violated migrants' human rights. Respect for human rights meant speaking out against abuse, detentions and deportations of migrants as well as working to protect their rights.

**(e) Richard Perruchoud**

Mr. Richard Perruchoud<sup>35</sup> gave a summary of the presentations and comments made in the round tables, with special emphasis on the following points and proposals:

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<sup>34</sup> Director of CEMLA (Centre for Latin American Studies on Migration), Argentina.

<sup>35</sup> Executive Officer/Legal Advisor of IOM.

- There was consensus that trafficking in persons was a modern form of slavery.
- Trafficking in persons at the national level increased the challenge to reduce it and prevent it in each country.
- Amnesty programmes could be helpful in protecting the human rights of migrants.
- Support should be given to the proposal to seek common solutions to the problem of integrating the persons involved.
- Attention should be drawn to some contradictions in regional perspectives concerning migration, for example, with respect to the concept and management of borders or the role of civil society organizations in creating and adopting migration policies.

Lastly, the IOM representative stated that the objective of his organization and that of the Conference was to ensure that migration movements were orderly and took place under humane conditions.

## Summary

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This Conference was a milestone event for the hemispheric agenda on the human rights of migrants and trafficking in persons. The presentations, comments and discussions have helped to provide a basis for cooperation between governments in these highly complex and very important areas. They reflect substantial similarities in the approach to the topics discussed and also explainable differences in the analysis and discussion of these social phenomena that are far from being totally understood.

With regard to *international migration trends in the Americas*, it was emphasized that they could only be considered in the hemisphere in conjunction with the repercussions of the current globalization process on the mobility of the population. In fact, the Latin American and Caribbean populations were not exempt from the contradictions of today's world, in which schemes were promoted for the freedom of movement of capital, goods and services between countries, while the mobility of persons between nations—which in practice was stimulated by those factors—was hampered by restrictions that operated even in the context of the trade integration processes. That was one of the reasons for the proliferation of problems relating to the human rights of migrants, and to smuggling and trafficking in persons, which were the result of mechanisms to evade government controls in the receiving and transit countries. The organizations that smuggled and trafficked in persons were a direct threat to the security of countries and violated the rights of the persons who were displaced.

A knowledge of the factors that led to migration had to be part of a broad vision of social and economic development, and it was important to recognize the strong asymmetries that existed

between nations, as such factors helped to intensify the mobility of sectors of the population which were increasingly unable to meet their needs in their communities of origin. While the receiving nations adopted policies, legislation and more restrictive measures to control the movements of persons who were heading towards their territories, the demand for workers in their labour markets was increasing, especially in view of limitations on the availability of the local labour force. Migrant labour thus made an important contribution not only to the economic growth of those nations, but also to the social, political, demographic and cultural enrichment of their peoples. The countries of origin faced challenges in taking advantage of some potential benefits, for example, remittances, while they ran the risk of seeing their human capital eroded, families disintegrating and their emigrants in a very vulnerable position in view of the lack of adequate channels for mobility.

There was undoubtedly a need for migration agreements between countries that took into account their predominant status as receiving or transit countries or countries of origin for the migration flows, in order to deal in a comprehensive way with the phenomenon of contemporary migration and its various manifestations. Migratory governance and the regulation of migration flows had to be based on a vision of respect for the human rights of individuals. A relatively appropriate set of international instruments was available that included elements for those purposes. They had not yet been fully and effectively implemented, however, as many of them were not in force or had not been duly incorporated into the national legal frameworks and the rules of operation of the responsible institutions. The dialogue and exchange of experiences among nations should therefore be strengthened. The intergovernmental forums on migration in the region and those of civil society organizations working with the issue might provide the necessary space for communication and cooperation.

In relation to the topic of *human rights and mobility of individuals*, reference was made to the permanent tension between the sovereign right of States to control and regulate the admission, stay and transit of foreigners in their respective territories and the mobility needs shown by increasing sectors of the population in the countries of the region, motivated by the conditions in their communities of origin and by the unquestionable demand in the destination countries.

It was shown that, although the international law instruments created to protect the rights of migrants might be sufficient and adequate, there were significant gaps and impediments to establishing standards for general monitoring. A diligent review of domestic legislation was required in order to ensure its compliance with the commitments made in the context of international law; it was also necessary to review the operating rules of the institutions responsible for their application. An essential complement for ensuring full operation of the protection instruments was education and training for the implementing personnel, which should be a permanent and continuous process.

There was always a potential for forced migration in the region, whether due to situations of conflict or other life-threatening factors. There was a framework of international law and domestic legislation to provide the humanitarian assistance required by the victims of such situations, but there were also increasing difficulties in connection with their timely and effective operation, as in the case of making the difficult distinction between asylum-seekers and refugees, and persons who were moving strictly for reasons of employment. The governments of the nations involved should be supported by external cooperation and, in particular, by the specialized international organizations. Treatment and assistance should take place in a framework of respect for human rights and the observance of universally accepted principles —such as "non-refoulement"— in order to guarantee the full implementation of asylum and refugee status in the countries of the region.

Special provisions should be adopted to protect the more vulnerable groups within migrant populations, especially women and children, adolescents, families, the disabled, undocumented persons and members of ethnic and religious minorities that were the subject of persecution and

discrimination. There should be provision for, among other aspects, combating any form of discrimination deriving from postures and attitudes of intolerance, domination, exploitation, xenophobia and racism.

Undocumented status placed migrant populations in a position of vulnerability and made them easy prey for individuals and organized groups, who not only committed abuses, but subjected individuals to practices that amounted to modern forms of slavery, and were an affront to human dignity. In the processes of prosecution, detention and prosecution of those responsible it was important to make a distinction between the victims and the offenders. It was also noted that migrants were frequently stigmatized by association with persons involved in criminal acts, such as drug trafficking, smuggling and terrorism, which were not related to international labour migration.

With regard to the necessary *gender and age concerns relating to the human rights of migrants*, there was almost unanimous agreement that women and minors, both boys and girls, were frequently the object of discriminatory practices and various abuses, despite the creation and adoption of numerous protective instruments. The problem seemed to stem from the lack of effective application of the regulations to combat abuses, which was especially noticeable in the impunity enjoyed by those responsible, who included individuals and organized groups of delinquents, and agents of authority whose complicity and involvement allowed and facilitated the proliferation of such practices.

Emphasis was given to the particularly defenceless situation and greater exposure to abuse in the case of girls, who were subjected to exploitative and vexatious conditions, especially when they were the subject of trafficking with condemnable aims such as prostitution and child pornography. For that reason, one essential aspect of protecting the rights of women and children was the necessary guarantee of access to health services, especially in relation to reproductive health. Similarly, services had to be provided for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS.

With regard to *frameworks and programmes for promoting and protecting the human rights of migrants*, there were substantial and relevant programmes such as the one promoted among the countries of the region by the Inter-American Commission on Human Rights of the Organization of American States. Once again, the importance of awareness raising and training of staff was an indispensable factor in ensuring the success of initiatives of that nature.

Similarly, efforts should be made to ensure the integration and active participation in such initiatives of civil society organizations and other non-conventional actors, such as businessmen, international organizations and organizations of established migrants.

Significant conceptual advances had been made in terms of the connection between *trafficking in persons and human rights*. The Convention against Transnational Organized Crime and its protocols had made valuable contributions to providing working definitions to distinguish between trafficking and smuggling of persons. Elements were thus available to help include such crimes in national legislations, together with the treatment and sanction for each crime.

Trafficking had three main component elements: (1) collection, transport, transfer, and receipt or reception of individuals in an irregular way; (2) the use of coercion or force; and (3) exploitative purposes. That was substantially different from smuggling, which was also an illicit act, but did not include the last two components. It was recommended that trafficking, in view of its nature and the elements inherent in it, should be considered a transnational crime. It was appropriate to call for cooperation between countries as a first step to fight it and combat the risks occurring with its diffusion and operation. Most of the victims were from highly vulnerable sectors, living in conditions of poverty and social exclusion, and thus easy prey to individuals and organized groups.

The formulation and increasing adoption of protection instruments provided a regulatory framework to encourage energetic action against trafficking in persons. Again there was reference

to the continuing lack of vigorous and decisive action to sanction those responsible and put an end to their impunity. It was therefore essential to guarantee protection for those victims who were present and participated in legal trials, in order to counteract their fears and any pressures that the offenders might exert on them through intimidating actions. Awareness raising and training programmes for staff and agents of authority were crucial for ensuring differentiated treatment of the offenders and victims of trafficking.

There was also reference to the need to develop a broad range of programmes for communication, information and dissemination of the dangers associated with the problem of trafficking. One way to facilitate the work of States to combat trafficking and provide assistance to victims was the strengthening of the consular protection systems, which -in the majority of cases- faced serious difficulties and budgetary problems.

The *baseline analysis of trafficking in persons in the Americas* drew attention to many of the aspects indicated in the previous units. Attention was drawn to the fact that trafficking in persons also occurred within countries, although it was a process that manifested increasingly at the border crossings between countries and even between continents.

Another cause of concern in that area was the forced recruitment of minors for military purposes, for forced labour, or for exploitation on the street. There was a need to support and encourage research into the relationship between the migration processes, the phenomena of trafficking and smuggling, and other processes commonly associated with them; for example, situations of poverty, exclusion, marginalization, prostitution, forced labour, street children, pornography, adoption of minors, child labour, corruption and military recruitment.

It was important to formulate and adopt legislation that would offer a common model for dealing with sanctions for trafficking practices in a specific chapter of penal legislation, and to have a clear definition with regard to protection of the victims in order to protect them from discretionary and arbitrary behaviour from minor officials, and to avoid stigmatization and discrimination. In the same way, trafficking had to be explicitly recognized as a serious crime, with penalties appropriate to its serious nature and effective action should be taken to end the impunity of those responsible.

With regard to *best practices and future activities for prevention and assistance*, it was suggested that the concept of sovereignty of States served as a basis for establishing and regulating criteria for the admission, presence and transit of non-native persons in territories, in a context of increasing openness to free cross-border transit of capital, goods and services. There were various kinds of differences in treatment, however, between nationals and foreigners, which called into question the validity of the fundamental rights of individuals, regardless of origin, as well as compliance with commitments made by the States in the framework of international law, which in general had constitutional status.

The concern for national security had been heightened since the events of September 2001. It was important that the measures adopted in the fight against terrorism did not violate the rights of migrants. In that context, consideration should be given to the role of migration in the building of nations and to their contribution to the economic, political, social and cultural development of their respective societies. Migration policies and the legal frameworks supporting them should counteract the noxious effects of the spread of smuggling and trafficking in persons, which in many cases was the result of that same tightening of migration policies.

The increase in such phenomena had encouraged the dissemination of negative perceptions and attitudes towards migrants in the populations of the receiving and transit countries for the flow, so that the distinction had been lost between the victims, who were the migrants, and the offenders, who were those responsible for or accomplices to the crimes against the migrants. It was totally unacceptable that a lack of clarity concerning the status of such persons should be a reason for the dissemination and proliferation of racist, xenophobic and discriminatory practices and attitudes.

The main initiatives in the area of protection, although requiring special emphasis on dealing with the consequences of such phenomena, should also transcend their essential causes, especially when it was a question of structural factors whose effects were more severe on particularly vulnerable sectors. One immediate and specific action required was the standardization and updating of the legislation of each country in accordance with the commitments acquired in the framework of international law. The latter included the role and scope of the entry into force of the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, which could become an effective instrument for the defence and protection of migrants in the region.

Lastly, with regard to best practices, there was recognition of many valuable experiences in services for migrants in the region. They included programmes for the re-integration of voluntarily repatriated populations, and of women and children who were trafficking victims. Mention was also made of programmes and initiatives in the area of physical and mental health for the victims of forced displacements. It would be appropriate to study and establish their specific circumstances as a starting point for making progress in seeking alternative services.



## **Annexes**

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## Annex 1

### Final report

Conference room paper Dsc/1

English

Original: Spanish

Economic Commission for Latin America and the Caribbean (ECLAC)

International Organization for Migration (IOM)

Hemispheric Conference on International Migration: Human Rights  
and Trafficking in Persons in the Americas

Santiago, Chile, 20-22 November 2002

### Report

Government representatives attending the Hemispheric Conference on International Migration: Human Rights and Trafficking in Persons in the Americas, held in Santiago, Chile, drafted a set of preliminary conclusions in order to set forth the main points made and discussed at the plenary meeting. This preliminary document was then submitted to the Governments represented at the Conference for their further consideration over a period 45 days. Those Governments wishing to do so conveyed their observations on the preliminary conclusions to the Presiding Officers of the Conference, who, with the benefit of these additional comments, have now developed a final report. The latter, which is to be distributed to the Governments, civil society organizations, international agencies and the general public, will also include: (a) the final set of conclusions, based on supplemental observations received from the Governments; and (b) the document prepared by the participating civil society organizations.

#### I. Introduction

The Hemispheric Conference on International Migration: Human Rights and Trafficking in Persons in the Americas, which took place in Santiago, Chile, from the 20<sup>th</sup> to the 22<sup>nd</sup> November 2002, was organized by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) and the International Organization for Migration (IOM), with the collaboration of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The event was co-sponsored by the United Nations Population Fund (UNFPA), the Inter-American Development Bank (IDB), the United Nations Children's Fund (UNICEF), the International Labour Organization (ILO) and the Latin American Economic System (SELA). The United States also provided financial support for this event as part of its efforts to assist in the follow-up of mandates relating to the Third Summit of the Americas.

The Conference was attended by representatives of 41 ECLAC member States, representatives of international organizations, prominent scholars and a number of civil society organizations working in the field of migration. The latter also conducted a parallel event. ECLAC offered its facilities for the realization of both events.

## **II. Objectives of the conference**

### **General objective**

The overall objective of the Conference was to strengthen cooperation among Governments in the field of international migration, to help identify mechanisms for protecting and promoting the human rights of migrants and for combating and preventing trafficking and, in so doing, to fulfill the relevant international mandates and agreements in these areas.

### **Specific objectives**

- To contribute to a fuller understanding of the multiple determinants and consequences of international migration in accordance with the conclusions, recommendations and resolutions of various international forums and organizations that have deliberated upon the issue.
- To consider and disseminate information about international mandates, activities and agreements concerning the human rights of migrants.
- To contribute to the convergence of regional consultation mechanisms dealing with migration by ensuring the broadest possible participation in the Hemispheric Conference by Governments, representatives of regional processes concerned with migration (the Summit of the Americas, the Regional Conference on Migration or “Puebla Process”, the Puebla-Panama Plan and the South American Conference on Migration), international organizations, non-governmental organizations, civil society institutions and experts on migration.
- To identify international migration issues for consideration at the next Summit of the Americas.
- To present the main features of a proposed inter-American programme within OAS for the promotion and protection of the human rights of migrants, including migrant workers and their families, as called for in the Plan of Action adopted at the Third Summit of the Americas.
- To consider the guiding principles and basic recommended activities for systematically combating and preventing trafficking in persons in the Americas.

## **III. Conclusions**

The participants in the conference acknowledged the existence of a number of international instruments for the protection of the human rights of migrants and the prevention of trafficking in persons. Presenters encouraged countries to consider ratification of these instruments, as well as implementation of those ratified to date..

### **A. Migration and the human rights of migrants**

Presentations and ensuing discussions on the topic of migration and the human rights of migrants made reference to the following points:

1. International migration flows will continue to increase in the continent, inasmuch as no change occurs in the structural conditions driving such flows;
2. Notwithstanding the activities already being pursued in an effort to arrive at an understanding of migratory phenomena and the status of migrants in the Americas, there is a need for more systematized data on these subjects;

3. Multilateral forums and regional processes, such as the Summit of the Americas, the Regional Conference on Migration, the South American Conference on Migration, the International Migration Seminar for the Caribbean and the International Migration Policy Seminar for the Caribbean Region —whose plans of action reflect shared interests and concerns with respect to the defence of the human rights of migrants and the effort to combat trafficking in persons— are effective channels for dialogue and cooperation regarding these issues. At the same time, greater convergence is needed in order to maximize efforts and use of resources;
4. An important challenge to be met throughout the world is to reconcile the war against terrorism with respect for and the protection of the human rights of migrants. While recognizing that States have the sovereign right to determine who shall enter or remain in their territories, and the duty to protect their citizens and residents, States also are urged to observe their obligations to provide migrants with humane treatment and full protection of their rights;
5. It is vital that the greater vulnerability of women, girls and boys be taken into consideration in the design of differentiated policies and programmes and in the implementation of activities dealing with migration, so as to ensure gender equality. As these vulnerabilities are most often present in situations of irregular migration, coordinated efforts are required at the national and international level to combat both migrant smuggling and trafficking in persons;
6. In order to promote and protect the human rights of migrants in the most effective manner possible, consideration should be given to realizing comprehensive and specific initiatives on the basis of coordinated efforts involving Governments, civil society, the private sector, and particularly the communities and organizations of migrants themselves;
7. The participants welcomed the working document presented by IACHR, in coordination with IOM, on an inter-American programme within the framework of OAS for the promotion of the human rights of migrants, which could offer a concrete response to the mandate issued at the Third Summit of the Americas, and serve as well as a valuable conceptual and programmatic framework for the adoption of initiatives in this field;
8. Some presentations highlighted the need to facilitate access to basic health care, including those concerned with the sexual health of men and women migrants, regardless of their migrant status or whether they are in situations of transit, destination, or return;
9. More information should be offered to migrants and broader research should be undertaken with a view to averting contagion and taking preventive measures with respect to sexually transmitted infectious diseases, including HIV/AIDS;
10. To address the problems faced by women migrants in a comprehensive and coordinated manner, consideration should be given forming strategic alliances at the national and international levels between mechanisms advancing of women's concerns, migration authorities, civil society organizations, and the private sector;
11. Mindful of the need to provide effective consular protection, Governments are urged to consider allocating more resources for this purpose and to promote efforts to seek out international cooperation mechanisms.

## **B. Trafficking in persons**

Presentations and ensuing discussions on the topic of trafficking in persons in the Americas made reference to the following points:

1. Trafficking in persons constitutes an egregious violation of human rights; a sustained, global and coordinated effort on the part of the public and private sectors is required to eradicate such activity. Such an effort should include measures by States to prevent and combat human trafficking through targeting, investigating, apprehending and prosecuting the perpetrators of such crimes;
2. An essential conceptual framework is contained in the provisions set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and, in particular, the provisions that treat a trafficked individual as a victim of the crime of trafficking in persons;
3. Included within and complementary to this Protocol, some key measures and activities identified for combating these illicit practices are:
  - Assign primary importance to the human rights of victims of trafficking in persons and enforce national and international provisions on the subject, as well as regional recommendations.
  - Promote more extensive data collection and research concerning the origins, causes and patterns of such trafficking in the Americas.
  - Recognize the need to address and alleviate contributing factors in the proliferation of trafficking in persons, especially women, girls and boys, such as lack of economic opportunities, low status of women and girls, a low age of sexual consent and the disintegration of family units.
  - Strengthen multilateral coordination in the formulation and implementation of government programmes and in the adoption of initiatives involving the participation of civil society and the private sector.

These undertakings could entail the following:

- (i) The development and strengthening of laws and criminal penalties against trafficking in persons (the protocol defines trafficking);
- (ii) Prevention, to include information campaigns, special programmes for women, girls and boys;
- (iii) Assistance and protection of victims, including return, reintegration and psycho-social assistance;
- (iv) Victim and witness protection mechanisms, including at a minimum temporary residence;
- (v) Training of public and private relevant entities;
- (vi) Initiatives for systematizing the collection of data on trafficking cases, including data on conviction rates against traffickers;
- (vii) Information sharing, including on research and programs;
- (viii) Anti-Corruption monitoring mechanisms;
- (ix) Coordination among the various sectors of society.

4. Priority should be accorded to achieving ratification and promotion of adherence to the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
5. In like fashion, initiatives should be effected at the national level to enact and implement laws specifically designed to combat trafficking in persons on the basis of criminalization, prevention and victim protection; as part of this process, best practices in each of these areas should be identified and disseminated.

The discussions at the Conference also reaffirmed the need to base activities as well on the principles set forth in the 1951 Convention and 1967 Protocol relating to the Status of Refugees.

Neither the preliminary nor the final version of these conclusions is binding upon any State.

### **C. Civil society organizations**

The participants in the Conference took note of the document prepared by the representatives of civil society (see appendix).

### **D. Follow-up**

The Chairperson, in coordination with the Conference organizers, will present these conclusions, together with a full report on the Conference, to the institutional structure of the Summit of the Americas, United Nations agencies and the public at large for the purpose of documenting actions in fulfilment of current mandates and stimulating interest in possible future initiatives to promote and protect the human rights of male and female migrants and to combat trafficking in persons in the Americas.

**Note:** Canada requests that when the conference proceedings are published, the statement of the Canadian delegation attending the indicated conference, as read at the conference plenary and transcribed below, be published immediately following the paper titled “Globalization and Migration: Canada’s response to the Chinese Boat Refugees” (ECLAC reference document DDR/9; date: 18 November 2002).

*“Thank you Madame Chair.*

*Regarding the views expressed by our esteemed colleague Mr. Wong, Executive Director of the Vancouver Association of Chinese Canadians, the Canadian delegation just wants to say that we fully respect his right to express his views.*

*We believe that forums like this help us —by looking at different and sometimes contrasting viewpoints—in the understanding of the very complex issues surrounding the trafficking in persons and in general enrich the process of dialogue.*

*The events which were portrayed regarding the boat arrivals of migrants to Canadian coasts in 1999 and their aftermath constituted a serious law enforcement event faced by the Government of Canada in general, and the Citizenship and Immigration department in particular, which for us, underlined the difficulty of dealing with trafficking in persons.*

*The Government of Canada believes that constructive criticism should always be welcomed as it enriches the policy formulation process, which constitute the day-to-day business of governments.*

*Lastly, the Canadian Delegation wants to share with you the fact that every year Canada welcomes around 250,000 immigrants from all over the world.*

*Thank you again Madame Chair.”*

## Annex 2:

### Programme of the conference

#### Wednesday 20 November

8:30 – 9:30 a.m.	Registration of participants
9:30 – 10:00 a.m.	Meeting of heads of delegation
10:00 – 10:45 a.m.	Opening session Remarks by José Antonio Ocampo Executive Secretary of ECLAC Remarks by Richard Perruchoud Executive Officer/Legal Adviser of IOM Remarks by Heraldo Muñoz Minister and Secretary-General of the Government of Chile
10:45 – 11:00 a.m.	Coffee break
11:00 – 11:10 a.m.	Adoption of the agenda Election of officers

#### I. International migration in the Americas

11:10 – 1:00 p.m.	Moderator: Joseph-Alfred Grinbalt, Chief of the Migration and Mortality Section of the United Nations Population Division
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##### Speakers:

- a) ***International migration in the Americas***  
Presentation by Jorge Martínez Pizarro, Researcher with the Population Division of ECLAC - CELADE
- b) ***Migration and labour***  
Presentation by Ricardo Infante, of the International Labour Organization (ILO) Office in Santiago, Chile
- c) ***Inter-governmental processes of dialogue and consultation on international migration in the Americas***  
Presentation by Javier Moctezuma Barragán, Undersecretary for Population, Migration and Religious Affairs of the Ministry of the Interior of Mexico

<b>Commentators:</b>	Alfonso Morales Suárez, Deputy Director General of Support for Ecuadorians Abroad, Ministry of Foreign Affairs of the Republic of Ecuador; Rolando Franco, Director of the Social Development Division of ECLAC
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Debate

12:45 – 2:30 p.m.	Lunch
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#### II. The human rights of migrants

14:30 – 4:00 p.m.	<b>Unit I:</b> <b>Human rights and the mobility of persons</b> Moderator: Pedro Pablo Villanueva, Representative of the United Nations Population Fund (UNFPA), Bolivia
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##### Speakers:

- a) ***Human rights and the mobility of persons***  
Presentation by Américo Incalcaterra, Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Colombia

- b) **Human rights and migration**  
Presentation by Richard Perruchoud, Executive Officer/Legal Adviser of IOM
- c) **Human rights, refuge and asylum**  
Presentation by Agni Castro-Pita, Representative of the Regional Office for South America of the United Nations High Commissioner for Refugees (UNHCR)
- d) **Human rights, migration and regional security**  
Presentation by Kelly Ryan, Deputy Assistant Secretary of State, Bureau of Population, Refugees and Migration of the United States Department of State
- Commentators:** Carlos Orlando, Director General of International Cooperation of the Ministry of Foreign Affairs of the Republic of Uruguay; Ann Jordan, Director of the Initiative Against Trafficking in Persons of the International Human Rights Law Group, United States
- Debate
- 4:00 – 4:15 hrs. Coffee break
- 4:15 – 5:45 hrs. **Unit II:**  
**Considerations of gender and age in the human rights of migrants**  
Moderator: Sonia Montaña, Chief of the Women and Development Unit Office of Secretary of the Commission
- Speakers:**
- a) **The human rights of migrant children and the children of migrants**  
Presentation by Alfredo Missair, Deputy Regional Director for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF)
- b) **The human rights of migrant women**  
Presentation by Luis Mora, Expert with the Technical Support Staff of the United Nations Population Fund (UNFPA), Mexico
- c) **The human rights of migrant workers**  
Presentation by Patrick Taran, Coordinator of the Global Campaign for Ratification of the International Convention on the Rights of All Migrant Workers and Their Families, ILO
- Commentators:** Juan Miguel Petit, Special Rapporteur of the Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography; Martha Isabel Cranshaw, of the Nicaraguan Civil Society Network for Migration
- 5:45 – 6:45 p.m. **Unit III:**  
**Frameworks and programmes for the promotion and protection of the human rights of migrants**  
*Main features of an "Inter-American programme with OAS for the promotion and protection of the human rights of migrants"*  
Presentation by Juan Méndez, President of the Inter-American Commission on Human Rights (IACHR)
- Commentators:** Alejandro Salinas Rivera, Human Rights Director of the Chilean Ministry for Foreign Affairs; Javier Mujica, Representative of the Human Rights Programme of the Peruvian Labour Advice Bureau (CEDAL) and of the Inter-American Platform for Human Rights, Democracy and Development (PIDHDD)
- Debate

Thursday 21 November

### III. Trafficking in persons

9:00 – 10:30 a.m.

#### Unit I:

#### Trafficking in persons and human rights

Moderator: Pilar Norza, IOM Regional Representative, for the Andean Countries

#### Speakers:

- a) ***Status of existing national and international legislation and of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime***

Presentation by Carmen Artigas, Chief of the Human Rights Unit of the Social Development Division of ECLAC

- b) ***Trafficking in persons and the human rights of migrants***

Presentation by Gabriela Rodríguez, Special Rapporteur on the Human Rights of Migrants of the United Nations Commission on Human Rights

#### Commentators:

Ana Elizabeth Cubías, Director of the Integral Social Development Unit in the Ministry of Foreign Affairs of El Salvador; Manuel Angel Castillo, Professor and Researcher, El Colegio de México, Mexico

Debate

10:30 – 10:45 a.m.

Coffee break

10:45 a.m. – 12:45 p.m.

#### Unit II:

#### Analysis of trafficking in persons

Moderator: Ximena de la Barra, Regional Advisor on Public Policies, UNICEF

#### Speakers:

- a) ***Analysis of trafficking in persons in the Americas***

Presentation by Mohammed Mattar, Co-Director, The Protection Project, Johns Hopkins University

- b) ***Trafficking in women***

Presentation by Susana Chiarotti, Consultant to the Women and Development Unit of ECLAC

- c) ***Trafficking in children***

Presentation by Bruce Harris, Regional Director of Casa Alianza

#### Commentators:

Pedro Oyarce, Director General of Multilateral Policy, Ministry of Foreign Affairs of the Republic of Chile

Debate

12:45 – 2:30 p.m.

Lunch

2:30 – 4:15 p.m.

#### Block III:

#### Prevention and assistance (best practices and future activities)

Moderator: Gina Gallardo Rivas, Expert in Migratory Matters of the Secretaría de Estado de la Mujer, Dominican Republic

#### Speakers:

- a) ***Applications of the law against trafficking in persons***

Presentation by Guy Bélanger, Manager of the Immigration Programme of the Canadian Embassy in Chile

- b) ***Programmes to combat and prevent trafficking in persons (including training)***

Presentation by Melba Martínez, Director of Consular Affairs and Colombian Communities Abroad (DAS) of the Ministry of Foreign Affairs of the Republic of Colombia

**c) *Assistance for victims of trafficking in persons***

Presentation by Víctor Wong, Executive Director of the Vancouver Association of Chinese Canadians, Canada

**Commentators:** Lin Lean Lim, Director of the Gender Promotion Programme (GENPROM) of ILO

Debate

4:15 – 4:30 p.m.

Coffee break

4:30 – 6:30 p.m.

**Unit III:**

**Continued**

Moderator: Florizelle O'Connor, Human Rights Consultant, Ministry of National Security and Justice, Jamaica

**Speakers:**

**d) *Trafficking in persons and the vulnerability of migrants***

Presentation by Jorge Bustamante, Professor and Researcher at El Colegio de la Frontera Norte, Mexico

**e) *Role of civil society in preventing and combating trafficking in persons***

Presentation by Francisco Rico-Martínez, Co-Director of the FCJ Hamilton House Refugee Project, Toronto, Ontario, Canada.

**f) *Considerations on a plan of work to combat and prevent trafficking in persons in the Americas***

Presentation by Raúl Beltrand, Chief of IOM Mission in Bogotá, Colombia

**Commentators:** Carla Menares Bury, Senior Coordinator of International Programmes of the Office to Monitor and Combat Trafficking in Persons of the Department of State, United States; Laura Langberg, Inter-American Commission on Women (CIM/OAS)

Debate

**Friday 22 November**

9:00 – 10:30 a.m.

**Report by civil society organizations**

Final panel with the participation of guest experts and the civil society organizations

**Speakers:**

Reynaldo Bajraj, Deputy Executive Secretary of ECLAC; Elizabeth Thomas-Hope, Professor of Environmental Management and Head of Department of Geography and Geology, University of the West Indies, Jamaica; Fanny Polanía, Representative for Latin America of the Global Alliance Against Trafficking in Women; Mario Santillo, Director of CEMLA (Centre for Latin American Studies on Migration), Argentina.

10:30 – 11:00 a.m.

Break

11:00 a.m.

**Conclusions and recommendations**

**Closing**

## Annex 3

### List of participants

#### A. Estados miembros de la Comisión / Member States of the Commission

##### ANTIGUA Y BARBUDA/ANTIGUA AND BARBUDA

**Representante/Representative:**

Clyde Walker, Chief Immigration Officer, Ministry of Foreign Affairs

##### ARGENTINA

**Representante/Representative:**

Raúl Martínez Camadro, Director General de Asuntos Consulares, Ministerio de Relaciones Exteriores, Comercio Internacional y Culto

**Miembros de la delegación/Delegation members:**

Guillermo Durrieu, Consejero, Embajada de Argentina en Chile

Susana Sanz, Directora Nacional de Asistencia Técnica, Consejo Nacional de la Mujer Argentina

##### BAHAMAS

**Representante/Representative:**

Vernon Burrows, Director of Immigration

##### BELICE/BELIZE

**Representante/Representative:**

Peter Parchue, Director of Immigration and Nationality Services

**Miembros de la delegación/Delegation members:**

Mario Arzu, Immigration Officer I, Immigration and Nationality Department

##### BOLIVIA

**Representante/Representative:**

Fernando Messmer, Cónsul General, Consulado General de Bolivia en Chile

**Miembros de la delegación/Delegation members:**

Ramiro Meledres Berríos, Director de Organismos Regionales del Ministerio de Relaciones Exteriores y Culto

Víctor Márquez, Cónsul de Bolivia en Chile

Aylin Oropeza, Vice-Cónsul de Bolivia en Chile

##### BRASIL/BRAZIL

**Representante/Representative:**

Mónica Meirelles Nasser, Primera Secretaria, Embajada de Brasil en Chile

##### CANADÁ/CANADA

**Representante/Representative:**

Luis Monzón, Senior Policy Advisor, Citizenship and Immigration

**Miembros de la delegación/Delegation members:**

Guy Bélanger, Consejero de Inmigración, Embajada de Canadá en Chile

Craig Dundas, Immigration Program Manager, Embajada de Canadá en Lima, Perú

Douglas Jenkins, Immigration Control

Victor Wong, Executive Director, Vancouver Association of Chinese Canadians

Francisco Rico-Martínez, Past-President, Canadian Council for Refugees

##### CHILE

**Representante/Representative:**

Pedro Oyarce, Director General de Política Multilateral, Ministerio de Relaciones Exteriores

**Miembros de la delegación/Delegation members:**

Patricio Torres, Embajador, Dirección General de Asuntos Consulares e Inmigración, Ministerio de Relaciones Exteriores

Eduardo Ortiz, Director para Comunidades en el Exterior, Ministerio de Relaciones Exteriores

Claudio Troncoso, Director Jurídico, Ministerio de Relaciones Exteriores

Alejandro Salinas Rivera, Director, Dirección de Derechos Humanos, Ministerio de Relaciones Exteriores  
Nicolás Torrealba, Jefe, Departamento de Extranjería, Ministerio del Interior  
Anita de Aguirre, Jefa del Departamento de Relaciones Internacionales, Servicio Nacional de la Mujer  
Diego Velasco, Dirección de Política Especial, Departamento del Crimen Transnacional Organizado, Ministerio de Relaciones Exteriores  
María Soledad Morales, Segunda Secretaria, Dirección de Política Multilateral, Departamento de Agencias Especializadas, Ministerio de Relaciones Exteriores  
Arturo Navarro, Tercer Secretario, Dirección General de Asuntos Consulares e Inmigración, Ministerio de Relaciones Exteriores  
Álvaro Guzmán, Departamento del Crimen Transnacional Organizado, Ministerio de Relaciones Exteriores  
Cristián Doña, Academia Diplomática de Chile, Dirección General Consular, Ministerio de Relaciones Exteriores  
Gerardo Ateaga, Abogado, Asesor Dirección de Derechos Humanos del Ministerio de Relaciones Exteriores  
Luz Rioseco, Abogado, Servicio Nacional de la Mujer  
Reginaldo Flores, Departamento de Estudios de Extranjería y Migraciones del Ministerio del Interior  
Carolina Cavada, Asesora, Ministerio del Trabajo y Previsión Social  
Carmen López, División Rectoría y Regulación, Ministerio de Salud  
María Gloria Sepúlveda, Jefa, Unidad de Relaciones Internacionales y Cooperación  
Juan Bustos, Departamento de Protección de Derechos, Servicio Nacional de Menores

## COLOMBIA

### Representante/Representative:

Melba Martínez, Directora de Asuntos Consulares y Comunidades Colombianas en el Exterior, Ministerio de Relaciones Exteriores

### Miembros de la delegación/Delegation members:

Carlos Iván Plazas Herrera, Coordinador del Grupo de Asistencia a Connacionales y Promoción de Comunidades Colombianas en el Exterior, Ministerio de Relaciones Exteriores  
Antonio González López, Ministro Consejero, Embajada de Colombia en Chile  
María Camila Moreno, Coordinadora Nacional de Atención al Desplazamiento Forzado, Defensoría del Pueblo

## COSTA RICA

### Representante/Representative:

Sergio Ugalde, Embajador, Jefe de Gabinete de la Vicecanciller

### Miembros de la delegación/Delegation members:

Marco Badilla Chavarría, Director General de Migración y Extranjería  
Norman Lizano Ortiz, Consejero Interno, División de Derechos Humanos del Departamento de Política Multilateral, Ministerio de Relaciones Exteriores y Culto

## CUBA

### Representante/Representative:

Rodolfo Reyes Rodríguez, Subdirector de Asuntos Multilaterales, Ministerio de Relaciones Exteriores

### Miembros de la delegación/Delegation members:

Carmen Zilia Pérez Mazón, Ministro Consejero, Embajada de Cuba en Chile  
Conrado Moreno Alvarez, Consejero a cargo de Asuntos Consulares, Embajada de Cuba en Chile

## DOMINICA

### Representante/Representative:

Julian Johnson, Secretary to the Cabinet and Head of the Public Service, Office of the Prime Minister

## ECUADOR

### Representante/Representative:

Alfonso Morales Suárez, Ministro del Servicio Exterior, Dirección General de Apoyo a los Ecuatorianos en el Exterior, Ministerio de Relaciones Exteriores

### Miembros de la delegación/Delegation members:

Augusto Saá Corriere, Ministro, Embajada del Ecuador en Chile  
Gonzalo González Fierro, Segundo Secretario, Embajada del Ecuador en Chile

## EL SALVADOR

### Representante/Representative:

Ana Elizabeth Cubías Medina, Directora de la Unidad de Desarrollo Social Integral, Ministerio de Relaciones Exteriores

**Miembros de la delegación/Delegation members:**

Claudia María Herrera Nosthas, Ministerio de Relaciones Exteriores

Rommel Antonio Torres, Investigador Económico del Grupo de Apoyo Técnico e Indicadores Económicos, Ministerio de Economía

Mauricio Ernesto Estévez Méndez, Investigador Económico del Grupo de Apoyo Técnico a Indicadores Económicos, Ministerio de Economía

**ESPAÑA/SPAIN**

**Representante/Representative:**

Juan Cano, Consejero Laboral, Embajada de España en Chile

**ESTADOS UNIDOS DE AMÉRICA/UNITED STATES OF AMERICA**

**Representante/Representative:**

Kelly Ryan, Deputy Assistant Secretary, Bureau of Population, Migration, and Refugees, Department of State

**Miembros de la delegación/Delegation members:**

Sonia Helmy-Dentzel, Migration Policy Officer, Bureau of Population, Migration, and Refugees, Department of State

Jeannette Davis, International Relations Officer, Bureau of Democracy, Human Rights and Labor, Department of State

Stephen Liston, Deputy Director for Summit Coordination, Department of State

Carla Menares Bury, Senior Coordinator for International Programs, Office to Monitor and Combat Trafficking in Persons

Julie Gianelloni Connor, Consejera de Prensa y Cultura

Paul Fermoile, Cónsul, Embajada de los Estados Unidos en Chile

Karin Sullivan, Segundo Secretario, Sección Económica/Política

Sandra Perroni, Especialista en Asuntos Culturales, Departamento de Asuntos Públicos

**GUATEMALA**

**Representante/Representative:**

Herbert Werner Bech Cabrera, Director de Asuntos Consulares, Ministerio de Relaciones Exteriores

**Miembros de la delegación/Delegation members:**

Lily Caravantes, Secretaria Presidencial de la Mujer

Jéssica María Mendoza Barquín, Tercera Secretaria, Dirección de Asuntos Migratorios, Dirección de Asuntos Consulares, Ministerio de Relaciones Exteriores

Stephanie Hochstetter, Primera Secretaria, Misión Permanente de Guatemala en Ginebra

Jorge Jerez, Asesor, Dirección General de Migración de Guatemala

Óscar Rolando Contreras, Interventor-Director de Migración

**GUYANA**

**Representante/Representative:**

Samantha Rodrigues, Foreign Trade Officer, Ministry of Foreign Trade and International Cooperation

**HAÍ/HAITI**

**Representante/Representative:**

Guy Lamothe, Embajador de Haití en Chile

**Miembros de la delegación/Delegation members:**

Lourde Corneille, Office National de la Migration

Delcarmise Napoléon, Consultora de Migración

**HONDURAS**

**Representante/Representative:**

Marcela Suazo, Ministra del Instituto Nacional de la Mujer (INAM)

**Miembros de la delegación/Delegation members:**

Dalila Pinel, Coordinadora de la Política Nacional de la Mujer

Héctor Manuel Monroy, Subdirector General de Población y Política Migratoria

**JAMAICA**

**Representante/Representative:**

Florizelle O'Connor, Human Rights Consultant, Ministry of National Security and Justice

**Miembros de la delegación/Delegation members:**

Karl St. C. Hamilton, Director, Security Intelligence Operations Division in the Ministry of National Security and Justice

**MÉXICO/MEXICO****Representante/Representative:**

Javier Moctezuma Barragán, Subsecretario de Población, Migración y Asuntos Religiosos de la Secretaría de Gobernación de México

**Miembros de la delegación/Delegation members:**

Ricardo Valero, Embajador de México en Chile

Carlos Tirado Zavala, Coordinador de Relaciones Internacionales e Interinstitucionales, Instituto Nacional de Migración, Secretaría de Gobernación

Rafael Pérez Miranda, Asesor de la Subsecretaría de Relaciones Exteriores

Luis Fernando Macías García, Secretario Técnico del Consejo de Población del Estado de Guanajuato

Patricia Wohlers, Directora General Adjunta de Asuntos Internacionales, Instituto Nacional de las Mujeres

Luz María Servin Sotres, Directora de Asuntos Internacionales, Instituto Nacional de Migración, Secretaría de Gobernación

Higinio Pintado Cortina, Asesor de la Oficina del Negociador en Jefe para Asuntos Migratorios Internacionales, Secretaría de Relaciones Exteriores

Javier Aguilar, Segundo Secretario, Embajada de México en Chile

Diana Leticia Alvarez Fernández, Secretaria Técnica de la Comisión Estatal de Apoyo Integral a los Migrantes y sus Familias, Consejo Estatal de Población de Guanajuato

**NICARAGUA****Representante/Representative:**

Luis Rodolfo Toruño, Director General de Migración y Extranjería

**Miembros de la delegación/Delegation members:**

Jorge Mayorga Jarquín, Director de Extranjería

María Cecilia Contreras Benavides, Sub Directora General de Organismos y Conferencias Internacionales del Ministerio de Relaciones Exteriores

**PAÍSES BAJOS/NETHERLANDS****Representante/Representative:**

Corinne Abbas, Segunda Secretaria, Embajada Real de los Países Bajos en Chile

**PANAMÁ/PANAMA****Representante/Representative:**

Mayra Ivankovich Anzola, Directora del Departamento de Naciones Unidas de la Dirección General de Organismos y Conferencias Internacionales del Ministerio de Relaciones Exteriores

**PARAGUAY****Representante/Representative:**

Felipe Robertti, Director General de Asuntos Consulares, Ministerio de Relaciones Exteriores

**Miembros de la delegación/Delegation members:**

Roberto Benítez, Director de América del Ministerio de Relaciones Exteriores

Gladys Salcedo de Benítez, Directora General de Migraciones

**PERÚ/PERU****Representante/Representative:**

Elizabeth Querol de Arana, Viceministra, Ministerio de la Mujer y Desarrollo Social

**Miembros de la delegación/Delegation members:**

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Félix Peña, Defensor III, Dirección General de Servicios Jurídicos, Defensoría del Pueblo  
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**C. Secretaría de la Organización de las Naciones Unidas / United Nations Secretariat**

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Joseph-Alfred Grinblat, Jefe, Departamento de Mortalidad e Inmigración, División de Población, Departamento de Asuntos Económicos y Sociales

Juliet Solomon, Experto Asociado, División para el Adelanto de la Mujer, Departamento de Asuntos Económicos y Sociales

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Américo Incalcaterra, Director Adjunto, Representación en Colombia

Juan Miguel Petit, Relator Especial

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Ximena de la Barra, Asesora Regional en Política Pública

Claudio Sepúlveda, Consultor

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### **ORGANIZACIÓN INTERNACIONAL DEL TRABAJO (OIT)/ INTERNATIONAL LABOUR ORGANIZATION (ILO)**

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Patrick Taran, Especialista Principal sobre Migración, Programa sobre Migración Internacional  
Eduardo Geronimi, Oficial Jurídico, Programa sobre Migración Internacional  
Ricardo Infante, Director del Equipo Técnico Multidisciplinario para Argentina, Brasil, Chile, Paraguay y Uruguay

### **ORGANIZACIÓN DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACIÓN (FAO)/FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)**

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Arnaud De Verdiere, Consultor

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### **BANCO INTERAMERICANO DE DESARROLLO (BID)/INTER-AMERICAN DEVELOPMENT BANK (IDB)**

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### **FACULTAD LATINOAMERICANA DE CIENCIAS SOCIALES (FLACSO)/ LATIN AMERICAN FACULTY OF SOCIAL SCIENCES (FLACSO)**

Carolina Stefoni, Investigadora

### **ORGANIZACIÓN DE LOS ESTADOS AMERICANOS (OEA)/ ORGANIZATION OF AMERICAN STATES (OAS)**

Juan Méndez, Presidente, Comisión Interamericana de Derechos Humanos  
Laura Langberg, Especialista de la Comisión Interamericana de Mujeres

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Gabriel Bidegain, Coordinador de Cooperación Internacional

## **G. Organizaciones no gubernamentales reconocidas como entidades consultivas por el Consejo Económico y Social / Non-Governmental Organizations recognized by the Economic and Social Council as having consultative status**

### **ASOCIACIÓN LATINOAMERICANA PARA LOS DERECHOS HUMANOS (ALDHU)/ LATIN AMERICAN ASSOCIATION FOR HUMAN RIGHTS**

Mario Cubillos, Experto

### **COMITÉ INTERNACIONAL DE LA CRUZ ROJA (CICR)/ INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)**

Yves Giovannoni, Jefe de Operaciones para América Latina y el Caribe

### **FUNDACIÓN FORD/ FORD FOUNDATION**

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Fátima Leal, Profesora

### **GRUPO JURÍDICO INTERNACIONAL DE DERECHOS HUMANOS/ INTERNATIONAL HUMAN RIGHTS LAW GROUP**

Ann Jordan, Directora de la Iniciativa Contra el Tráfico de Personas Sin Fronteras (México)  
Fabienne Venet, Directora  
Silvia Irene Palma

## H. Invitados Especiales / Special Guests

Jorge Bustamante, Corresponsal para México de la Organización de Cooperación y Desarrollo Económicos (OCDE) - Sistema de Información Continua sobre Migración (SOPEMI)  
 Manuel Ángel Castillo, Profesor-Investigador, El Colegio de México  
 Martha Isabel Cranshaw, Red Nicaragüense de la Sociedad Civil para las Migraciones  
 Bruce Harris, Director Regional América Latina, Casa Alianza  
 Ann Jordan, Directora de la Iniciativa Contra el Tráfico de Personas  
 Mohamed Mattar, Codirector, The Protection Project, School of Advanced Studies, Johns Hopkins University  
 Javier Mujica, Director, Programa de Derechos Humanos del Centro de Asesoría Laboral del Perú (CEDAL)  
 Adela Pellegrino, Directora del Programa de Población, Facultad de Ciencias Sociales, Universidad de la República, Uruguay  
 Juan Miguel Petit, Relator Especial de la Comisión de Derechos Humanos sobre la venta: de niños, la prostitución infantil y la utilización de niños en la pornografía  
 Fanny Polanía, Representante para América Latina de la Alianza Global contra la Trata de Mujeres  
 Francisco Rico-Martínez, Co-Director, FCJ Hamilton House Refugee Project of Canada  
 Mario Santillo, Director del Centro de Estudios Migratorios Latinoamericanos (CEMLA)  
 Elizabeth Thomas-Hope, Migration Expert of the University of the West Indies  
 Victor Wong, Executive Director, Vancouver Association of Chinese Canadians

## I. Secretaría / Secretariat

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## Annex 4

### Statement by civil society organizations

#### Migration in the Americas. Human rights for all migrants and their families

As representatives of civil society organizations who work in different areas in the field of human mobility, meeting in Santiago, Chile from November 19-22, 2002, at the first Civil Society Forum of the Americas on Human Mobility, drawing on the Guatemala Declaration of the Regional Network of Civil Organizations on Migration, and the Declaration of the First South American Civil Society Gathering on Migration in Quito, and:

#### Considering that:

America is a continent in motion and a growing, complex phenomenon of *forced mobility* in the form of international migration and internal displacement persists within it that, in recent decades, has demonstrated the following characteristics:

- Increased mobility within and outside of the continent.
- Rising levels of internal displacement.
- Feminization of migration, a result of the adoption of family strategies that include the autonomous migration of women as a survival mechanism.
- Growing migration of middle-class urban sectors and skilled populations.
- Sustained mobility of unskilled labor.
- Growing numbers of asylum-seekers, refugees, and unprotected migrants.
- Increasing numbers of people who disappear, are injured, or die in the process of migrating.
- Increases in the trafficking and smuggling of persons, illicit practices that undermine human dignity.

These tendencies demonstrate the failure of current economic models and are related to the imposition, in most American countries, of structural adjustment policies that have deepened social inequalities, unemployment and loss of job security, poverty, economic and social exclusion, as well as discrimination, the corruption of power structures, a lack of democratic governance, and political and institutional violence. At the same time, new initiatives like the negotiations of the Free Trade Area of the Americas (FTAA) and agreements in the framework of the World Trade Organization (WTO) will perpetuate and widen the reach of these policies, threatening to deepen already-existent social gaps, and generate more poverty in the sectors already affected, while accelerating the forced decline of new sectors below the poverty threshold, the feminization of poverty and extreme want.

- In Colombia the persistent internal armed conflict is increasingly internationalized by means of growing militarization throughout South America, the presence of foreign troops, the increase in displaced people, refugees, and forced international migration, as well as the fumigation of illicit crops in the framework of failed anti-drug policies.

- Far from defining migration policies that respond to complex realities of current migration patterns, our governments have reduced the migration agenda to restrictive policies and national security derived from the United States doctrine of a global struggle against terrorism since the 11<sup>th</sup> of September. This agenda views migration as a threat and is characterized by tightening of security policies, border control, increasing discrimination against migrant persons, arbitrary detentions, and deportations. This is accompanied by the process of installation of United States military bases at strategic points throughout the continent.
- This perspective reveals the absence of strong commitments from governments to define policies, legislate, and implement measures to ensure the recognition, promotion, and protection of the human rights of migrant populations, in clear non-compliance with the obligations derived from international instruments voluntarily assumed by governments. Even worse, the restrictive policies that are being applied in migration-related matters often generate the very situations of irregularity that the governments are trying to combat. A consequence of this irregularity is the worsening of migrant workers' labor and security conditions.
- While it is true that there exists a recent positive initiative in the framework of Mercosur, Bolivia, and Chile, which facilitates the free residence of its members in those countries, current policies in these countries will undermine full compliance with the agreement, as has occurred with the CA-4 initiative in Central America.
- The lack of reliable quantitative and qualitative studies, both academic and practical, regarding migration, and the scarce resources states devote to this research, undermines the governments' ability to design policies for the prevention of migration and for protection and services for migrants. Restrictive migration policies generate conditions that lead to the clandestine movement of people and, in this way, lend themselves to illicit activities such as trafficking and smuggling of persons—especially women and children—for labour or sexual exploitation, sale of organs, and illicit adoption of minors. High degrees of state and institutional corruption are linked to the operation of international networks of exploitation, because corruption tolerates and results in impunity for people responsible for trafficking networks, including, by participation or indifference, agents of the state.

### **We reject:**

Policies and models that result in differential access to fundamental human rights, and that exclude the majority of people from the benefits of economic growth and the right to development.

Agendas and models of integration and free trade (like the FTAA) that will deepen even more the current economic gaps and generate more poverty in the majority of our countries.

### **We urge governments:**

#### **In the international arena to:**

- **Effectively guarantee** all migrants the rights recognized in the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man and other international human rights instruments ratified by each state.

- **Subscribe to, ratify, and implement** in the countries that have not yet done so, the International Convention for the Protection of the Rights of all Migrant Workers and their Families, the Palermo Protocols, and ILO Conventions 97 and 143.
- **Extend** political and institutional support to the inter-American human rights protection system, including technical and financial resources, with the aim of guaranteeing the promotion and protection of the rights of migrants, displaced people, and refugees.
- **Contribute** actively and effectively to the work of the Inter-American Commission's Special Rapporteur for Migrant Workers and support the implementation of the Inter-American Program for the Protection of the Human Rights of Migrants.
- **Develop and implement** national plans of action against discrimination, in compliance with the agreements reached at the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, particularly the commitments relating to migrants, displaced people, and refugees.
- **Respect** the right to free mobility of indigenous people in accordance with their ancestral practices.
- **Promote** a political solution to the armed conflict in Colombia based on respect for national sovereignty and without foreign military intervention in the continent.
- **Develop** regional agreements that effectively guarantee the right of free transit and residence of nationals of the countries that make up these agreements, like the recent Mercosur-Bolivia-Chile agreement, taking into consideration the need for them to be accompanied by measures that will eliminate the high costs and numerous bureaucratic obstacles that currently characterize the process of applying for residency in many countries and would impede attainment of the objectives of such agreements.
- **Include** express clauses that protect the interests and rights of migrant workers in bilateral or regional free trade agreements.

**In national arenas:**

- **Promote** the democratic construction of alternative economic models that ensure the economic, social, and cultural rights of all people, and facilitate policy debates regarding the model of inequitable development that leads to forced migration.
- **Reorient** consular policies and the training of consular officials to help them protect and promote the respect of the rights of their co-nationals living abroad.
- **Implement** public campaigns of sensitivity, information dissemination, and training aimed at making the situation of migrants visible, keeping in mind the particular situations of women, youth, the elderly, people with special needs, indigenous peoples, persons of African descent, ethnic and religious groups and any group of migrants that may be subject to aggravated discrimination.
- **Finance and join forces** with civil society in order to implement studies, diagnostics, comparative analyses, and produce and disseminate timely and adequate information that allows for the design, implementation, and adequate monitoring of migration trends and public policies regarding migration.
- **Support** the efforts of organized civil society committed to the defense of the rights of migrant populations, ensuring their access to information and their participation in the design, debate, and implementation of public policies regarding migration.

- **Support** the efforts of migrant organizations that already exist in various countries to ensure that they are able to carry out their programs and projects.

**In relation to the particular issue of smuggling and illegal trafficking of people:**

- Without using it as an excuse for the militarization of the continent, take measures to ban and repress mafias and networks dedicated to illegal trafficking and smuggling of people—in particular in cases involving women and minors—for labor or sexual exploitation, the commercialization of organs, and the illicit adoption of minors. Eradicate the impunity that these networks have enjoyed up to the present, and dismantle and penalize the acts of state and institutional corruption that give rise to this impunity. Sanction the promoters and consumers of child prostitution.
- Define policies, plans, and programs that, in the framework of a comprehensive agenda, guarantee the rights of the victims of these crimes, taking into particular consideration the creation and implementation of comprehensive assistance programs to victims of smuggling, including social, legal, and psychological support.

To conclude, we demand that governments define policies, plans, and programs that, in the framework of a comprehensive agenda, fully guarantee the rights of their citizens living abroad, as well as the foreigners residing in their territory, regardless of migratory status. To do this, they must address the multiple dimensions of the phenomenon of migration, refugees and displacement, instead of reducing it unilaterally and exclusively to national or hemispheric security objectives. In particular, we demand the adoption and implementation of laws that are consistent with international human rights treaties and guarantee the protection and not the criminalization of migrants, facilitating the regularization of their migratory situation.





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