

PROTECTION OF PERSONS INVOLVED IN MIGRATION:

NOTE ON IOM'S ROLE

1. "We already do protection, we just don't call it that". This is a common response in discussions about the concept of protection. It presupposes that there is a difference between calling something protection and actually doing it, between concept and practice.
2. While there is no simple definition of "protection", protection is usually defined as all activities aimed at obtaining full respect of the rights of the individual in accordance with the letter and spirit of the relevant bodies of law. Relevant national and international actors shall conduct these activities impartially and not on the basis of race, nationality, national or ethnic origin, language or gender. Protection activities include any activity which fosters an environment conducive to respect for the rights of individuals in accordance with the relevant bodies of law. Protection is thus a practical activity, but one taking place within a legal framework; in the context of IOM, within the framework of International Migration Law.
3. Protection is the prime responsibility of States: a State has the duty to protect all persons on its territory, be they its own nationals or foreigners. Each State has also the right - and the duty - to defend and protect its nationals abroad, and to allow other States to protect their nationals residing on its territory.
4. Means of protecting the human rights of migrants exist not only at the national level but also at the international level; for instance, a State exercises diplomatic protection (including by bringing a case to an international court), or the migrant may have access to international or regional bodies. Protection of migrants under international law has developed in different treaty regimes - in addition to human rights law - covering the rights of specific groups of persons involved in migration: migrant workers law, refugee law, humanitarian law, maritime law, criminal law, etc. Treaty bodies are established under some international instruments; in other cases, specific organizations or bodies are entrusted with contributing to the strengthening of human rights protection. In all cases, however, States retain their prime responsibility to observe and comply with their treaty obligations (see for instance article 1 common to the four Geneva Conventions of 1949 "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.").
5. A key consideration, sometimes forgotten, is that international actors, including IOM, support States in their duty to protect. While certain intergovernmental organizations have a legal protection function based on mandate (such as UNHCR and ICRC), the concept and indeed application of protection is not restricted to legal mandate, but also extends to *de facto* protection, where an organization's activities in effect extend protection to persons benefiting from the services of the organization. In other words, the actual assistance rendered constitutes a form of protection, especially where it protects the life and physical well-being of persons at risk. While protection is not the prime objective of the organization concerned, or even necessarily a formally recognized objective, it is a consequence or effect of the implementation of the main or exclusive purpose of the organization. IOM's protection role

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and activities in no way absolve States from their duty to ensure effective respect of the human rights of migrants. Its protection role is to support and supplement the activities of States in the application of their duty to protect.

6. Recognition of the human rights of migrants and the need for the promotion of these rights has been present in IOM's constituent documents since the Organization's inception:

- a) In 1951, one of the reasons for creating IOM was the need to protect migrants leaving Europe from the vicissitudes and dangers of migration. The preamble of the Brussels Resolution referred to establishing a provisional intergovernmental arrangement in order to move people who "...desire to emigrate to overseas countries where their services can be utilized in conformity with generally accepted international standards of employment and living conditions, with *full respect for human rights*".
- b) The 1954 Constitution, in its Preamble, stressed the need to promote cooperation amongst international actors with a view to the emigration of persons where "they may ... live with their families in *dignity and self respect*".
- c) In 1989, Constitutional amendments carried over this objective, and a further preambular paragraph was added to the Constitution on consultation on migration issues "not only in regard to the migration process but also the *specific situation and needs of the migrant as an individual human being*".

7. It is important to note that IOM's objective resulting from amendments to the Constitution is to provide its services to ensure the *orderly and humane migration* of persons. The underlying concept is that organized migration is needed, *inter alia*, to ensure respect for human dignity. Resolutions of the Council since then have confirmed this role of IOM, in particular, the need to "*uphold the human dignity and well-being of migrants*"¹ and to work towards the effective respect for the human rights of migrants. Thus, a reading of IOM's Constitution and governing body resolutions indicate that IOM has a protection role within the parameters identified above.

8. Directly or indirectly, IOM works towards the respect of human dignity and the protection of the individual in the implementation of its activities, that is, through its *action*. For example, by providing safe transportation or evacuation in conflict situations and related support, IOM protects the physical integrity of the beneficiary and contributes to the full realization of the right to leave any country and to return to one's country of nationality. IOM's provision of shelter to victims of trafficking protects the fundamental human right not to be held in slavery or servitude. IOM's special resettlement or emigration programmes in situations of internal strife contribute to the implementation of the right to find safe haven abroad. IOM's medical programmes ensure migrants' fitness to travel and facilitate health care follow-up in receiving countries, thus promoting the right to an adequate standard of living, including health and well-being. These are but a few examples of how IOM *de facto* protects individuals falling under its mandate.

¹ See Council Resolution No. 923 (LXXI) of 29 November 1995 on "Future activities of IOM" and Resolution No 908 (LXIX) of 30 November 1994 on "Role of IOM with regard to trafficking in migrants and the safeguarding of migrants rights".

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9. An effective contribution to promotion and protection of the rights of beneficiaries is now an integral part of the programmes of IOM, conceptually and in practice. This dimension is part not only of the Organization's operational activities, but also of other types of activities: for example, seminars and workshops organized by IOM routinely take into account the protection and promotion of the human rights of migrants. The rights and obligations of migrants - and of States - are included in capacity building projects and the advisory services provided by IOM in developing or updating national migration policies, legislation and administrative structures.

10. IOM activities constitute in many situations a form of protection in that the activities contribute to ensuring the protection of human rights. Although IOM has no legal protection mandate, the fact remains that its activities contribute to protecting human rights, having the effect, or consequence, of protecting persons involved in migration. In sum, IOM aims at enhancing the humane and orderly management of migration by extending protection to migrants through its activities and ensuring effective respect for their human rights, consistent with international migration law.

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