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IOM POLICY ON PROTECTION

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Introduction

1. The concept of protection was originally conceived as a specific mandate that the international community conferred on an international organization which was entrusted with the responsibility of providing protection to persons manifestly unable or unwilling to avail themselves of the protection they were entitled to from their State. It should however be recalled that States have the primary responsibility under international law to protect persons under their jurisdiction. Within this original concept, some organizations were mandated to provide protection to persons crossing a border to flee persecution (i.e. the Office of the United Nations High Commissioner for Refugees) or caught up in war (i.e. the International Committee of the Red Cross (ICRC)). Indeed, these organizations were called upon to be international substitutes offering protection from persecution and from violations of international humanitarian law which should rightfully have been provided by the State. This approach entailed giving these organizations defined and circumscribed mandates in specific conventions¹ and went as far as providing them with a substitutive protection mandate. It was understood that effective protection needed to be accompanied by the provision of assistance and relief (e.g. shelter, food, health services); however, these were viewed as ancillary, albeit complementary, activities that fell outside or beyond the substitutive protection mandate.

2. The concept of protection by international organizations has, however, since evolved. There has been ongoing reflection in recent decades by States, international organizations, humanitarian actors and other stakeholders on the general concept of protection, what it involves and the strategies required to ensure improved protection of people. The topic of the protection of migrants, which is of particular relevance to IOM, has also received increased attention.

IOM and protection

3. In 2007, in conjunction with the adoption by the Member States of the IOM Strategy, IOM produced a Note that outlined the broad parameters of IOM's protection role.² In the Note, the Organization emphasized that protection is the intended outcome of its activities and set out the many ways in which the rights, and thereby the dignity and well-being, of migrants are upheld by the Organization as it carries out its functions.

4. The Council document entitled "The human rights of migrants – IOM policy and activities" (MC/INF/298 of 12 November 2009) reaffirmed IOM's commitment to the principle that orderly and humane migration benefits migrants and society. The document states that the Organization acts to, inter alia, work towards the effective respect for the human rights and well-being of migrants. It also sets out that: "Many...international actors [other than States], including IOM, have a key supporting role to play in achieving the effective respect of the human rights of migrants". The document further explains that: "While there is no simple definition of protection, it is typically 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. The relevant international legal framework for the protection of

¹ The 1951 Convention relating to the Status of Refugees and the 1949 Geneva Conventions and their 1977 Protocols which form the core of international humanitarian law.

² Protection of persons involved in migration: Note on IOM's role (IC/2007/3) of 18 April 2007.

migrants is international migration law, which is derived, inter alia, from relevant instruments of human rights law, labour law, refugee law, humanitarian law, maritime law and consular law.”³ The document also recognizes that: “Directly, or indirectly, in furtherance of its overall objective to facilitate the orderly and humane management of migration, IOM works towards the respect of human dignity and the protection of the individual in the implementation of its activities”. This was reiterated by an explanation of how IOM has a role in supporting States in their obligation to protect, as well as a role in assisting, migrants: “...the actual assistance being rendered constitutes a form of protection, especially where it protects the life and well-being of persons at risk.”

5. In addition, other IOM documents have provided information on the Organization’s role in protecting the rights of migrants.⁴ Thus, the IOM Constitution and various Council and other documents provide the basis for IOM’s involvement in protecting the rights of migrants. These documents are the foundation for a migrant-centred approach in IOM’s activities which takes into account not only the needs, but also the rights, of the migrant.

6. In Resolution No. 1244 of 27 November 2012 on IOM and the United Nations High-level Dialogue on International Migration and Development in 2013, the IOM Council affirmed the support of the Member States for the recognition of IOM’s current and future role as the global lead agency on migration, as well as its extensive knowledge, expertise and experience, in all aspects of the High-level Dialogue in 2013. In the IOM position paper on the 2013 United Nations General Assembly High-level Dialogue on International Migration and Development (14 February 2013), the human rights and protection of migrants had a prominent place and one of the six key points underlined the need to ensure respect for and protection of the human rights of all migrants. More specifically, the Organization stressed the need to promote a more rights-based approach to migration, which ensures that migrants can access their rights, taking into account vulnerabilities based on gender, age, health, legal status and other factors.

7. The Declaration of the High-level Dialogue on International Migration and Development, which was adopted on 3 October 2013,⁵ reaffirmed the need to “protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status” and reiterated the commitment of the international community to “protect migrants from exploitation and other abuses”, including vulnerable migrants, such as victims

³ It should be noted that the definition of “protection” given in document MC/INF/298 reflects and is in full accordance with the definition of protection adopted by the Inter-Agency Standing Committee.

⁴ For example, IOM’s protection responsibility was illustrated in a Council document concerning internally displaced persons which indicates that the Organization’s various activities “are tailored to respond to the specific needs of internally displaced persons in a given circumstance” and that “...IOM is an active member of the Protection Coalition of the IDP Unit [within OCHA] which is tasked with improving the quality and effectiveness of practical protection in the Field and with advising the Unit in its efforts to improve the general protection framework for IDPs.” (MC/INF/258 of 18 November 2002). Two important documents dealing with counter-trafficking make it clear that the Organization’s objective in this field is “to curtail migrant trafficking and to protect the rights of migrants caught up in the practice” (MC/EX/INF/58 of 10 May 1999), and that the strategic approach of the Organization to the multifaceted aspects of trafficking in persons includes the protection of the human rights and safety of the victims of trafficking, as well as assistance to victims of trafficking (MC/INF/270 of 11 November 2003). IOM’s action in the protection of migrants’ health was further set out in two important publications: *Caring for Trafficked Persons: Guidance for Health Providers* (IOM, the United Nations Global Initiative to Fight Trafficking in Persons and the London School of Hygiene and Tropical Medicine, 2009), available from http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=47&products_id=510; and *International Migration, Health and Human Rights* (IOM, the World Health Organization and the Office of the United Nations High Commissioner for Refugees, 2013), available from http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=41_7&products_id=976.

⁵ A/RES/68/4, available from www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/4.

of trafficking, migrant women and children. The Declaration also “recognize[ed] the efforts made by the international community in addressing relevant aspects of international migration and development, through different initiatives”, referring specifically to the expertise of IOM. The Declaration adopted a clear stance on the protection of all migrants, as States united in a joint declaration on the importance of, among other things, the protection of their rights. As a consequence, IOM Member States, through the Declaration, have reiterated the commitment of the international community to protect migrants and clearly recognized IOM’s leading role as the global migration agency in doing so.

8. During the High-level Dialogue, the Secretary-General of the United Nations presented his eight-point agenda for action to make migration work, the first point of which was to “Protect the human rights of all migrants”.⁶

9. With regard to the post-2015 development agenda, the negotiated outcome document entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, to be formally adopted at the upcoming United Nations Sustainable Development Summit, which will take place from 25 to 27 September 2015, states that: “We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status...” Concerning the outcome document, the Secretary-General of the United Nations has referred to the Sustainable Development Goals and the new global Agenda as a fitting tribute on the 70th anniversary of the Charter of the United Nations.

10. There is now a focus on the effective implementation of rights already found in international, regional and national legal norms and such effective implementation is framed in a language of “respect for” and “protection of” rights and individuals, which also includes the right to a remedy when violations occur. There is no “substitution” by international organizations for the primary responsibilities of States in effecting the necessary respect for and protection of the rights of individuals. Instead, international organizations support States in ensuring that the relevant law and standards are respected, resulting in their effective implementation and the protection of individuals; thus the organizations have a supportive protection mandate. In this context, it should be noted that the concept of protection has broadened to include the obligation to protect the rights of individuals through appropriate legislation and the effective implementation of law.

IOM Policy on Protection

11. Given this evolving context, the IOM Policy Coordinating Committee established a technical interdepartmental working group comprising members from Headquarters, the Regional Offices and Country Offices to develop a paper that would set out the IOM core institutional policy principles on protection. The result of this work is the IOM Policy on Protection (attached as an annex to the present paper), which has been adopted by the IOM Policy Coordinating Committee. The policy, being an internal management tool, aims to contribute to institutional clarity on the role of IOM in respect of protection. It is now mandatory for IOM staff members to ensure coherence and consistency in the Organization’s activities with respect to the protection of individuals and the promotion of their dignity and rights.

⁶ “Making migration work: an eight-point agenda for action”, available from www.un.org/en/ga/68/meetings/migration/pdf/migration_8points_en.pdf.

12. IOM's policy of supportive protection recognizes, as enshrined in Article 1(3) of the IOM Constitution, the sovereign right of States to determine admission and residence of non-nationals on their territory. IOM understands the protection of migrants to mean an obligation to respect, protect and fulfil the rights of individuals, and that States have the primary obligation to provide protection to all individuals on their territory or under their jurisdiction, regardless of nationality, statelessness or migration status and without discrimination. Protection is a question of securing rights.

13. IOM meets its obligation to promote and contribute to the protection of migrants and their rights by supporting States and its other partners in their respective protection responsibilities by having a rights-based approach to all its policies, strategies, projects and activities. The rights relevant to IOM's work include human rights, refugee law, labour law, humanitarian law, maritime law, law of the sea, transnational criminal law, nationality law and consular law. Individuals are protected from violation of their rights even when a clear and direct threat to a right is not imminent through establishing a general environment of respect for rights and thus for migrants.

14. IOM adopts a multidimensional approach that is sometimes direct and sometimes indirect and consists of two pillars. The first pillar comprises activities that have the primary objective to protect migrants and their rights (e.g. activities relating to victims of trafficking, labour migration and humanitarian aspects). The second pillar comprises activities that result in the protection of migrants and their rights, where such protection is either a secondary objective or a consequence of a different primary objective (e.g. border management).

15. Following the recommendation by the Policy Coordinating Committee, the IOM Policy on Protection is herewith brought to the attention of Member States.

IOM POLICY ON PROTECTION

A. PURPOSE AND BACKGROUND

1. The purpose of this document is to set out the policy on protection of migrants of the International Organization for Migration (“IOM” or “the Organization”) through the incorporation of a rights-based approach in its policies, strategies, projects and activities.
2. As the leading intergovernmental organization for migration, IOM plays a key role in contributing to the respect for, and protection of, migrants and their rights.¹ IOM is committed to the principle that humane and orderly migration benefits migrants and societies. The Organization acts to help meet the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and work towards effective respect for the human rights and well-being of migrants.² IOM acts with its partners in the international community to uphold the human dignity and well-being of migrants, which has been a concept present in IOM constituent documents since its inception.³
3. The IOM Constitution and other constitutive documents mandate it to work with migrants, refugees, displaced persons and others in need of international migration services or assistance.⁴ In the present document, the term “migrants” is used broadly to refer to all categories of persons within IOM’s mandate, regardless of their legal status, which includes persons who are moving or have moved across an international border as well as within a State, whatever the causes, composition or the length of this movement.
4. IOM’s activities have, since its foundation, aimed at promoting dignity and respect for migrants. To do so in accordance with international norms and standards and in order to promote individuals’ dignity throughout the migration cycle, respecting and upholding the rights of migrants, are essential. Thus the Organization, both in relation to its work in migration governance and its work in humanitarian situations, must firmly base its activities on existing international norms and standards, necessitating the incorporation of rights-based approaches by IOM into its policies, strategies, projects and activities.

¹ The Declaration of the High-level Dialogue on International Migration and Development (A/RES/68/4), adopted by the United Nations General Assembly on 3 October 2013, reiterated the commitment of the international community to protect migrants from exploitation and other abuses, and to protect particularly vulnerable migrants. The Declaration further noted that international migration, including irregular migration, should be addressed in a way that ensures full respect for human rights. The Declaration also “recognize[ed] the efforts made by the international community in addressing relevant aspects of international migration and development, through different initiatives”, referring specifically to the expertise of IOM. The Declaration adopted a clear stance on the protection of all migrants, as States united in a joint declaration on the importance of, among other things, the protection of their rights. As a consequence, IOM Member States, through the Declaration, have reiterated the commitment of the international community to protect migrants and clearly recognized IOM’s leading role as the global migration agency in doing so.

² The human rights of migrants: IOM policy and activities (MC/INF/298) of 12 November 2009, para. 1.

³ In 1951, one reason for creating IOM was the need to protect migrants leaving Europe, and the preamble to the Brussels Resolution referred to establishing the provisional intergovernmental arrangement (from which IOM was born) in order to move people desiring to emigrate with “full respect for human rights”. Subsequently, the preamble to the 1953 Constitution stressed the need to promote cooperation among international actors with a view to the emigration of persons where “they may ... live with their families in dignity and self-respect.” Furthermore, in 1989, an additional preambular paragraph was added to the Constitution concerning 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”.

⁴ MC/INF/298 of 12 November 2009.

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5. The last institution-wide IOM document focusing on the protection of persons involved in migration dates back to 2007.⁵ Given the position and role of the Organization, as well as developments in the area of rights-based migration governance and programming, it has become necessary to have a clear and unambiguous institutional policy on protection, founded in a rights-based approach, which strengthens IOM's contribution to the protection of migrants.
6. Adopting a policy on protection will further strengthen the Organization's ability to:
 - (a) Contribute to the promotion of the protection of migrants and their rights and thereby reduce their vulnerability, particularly those at risk of discrimination and exploitation and vulnerable groups, and safeguard their dignity and well-being;
 - (b) Support IOM Member States in fulfilling their international obligations in respect to the protection of migrants and their rights;
 - (c) Promote the role of IOM as an independent, neutral and impartial intergovernmental organization respecting the applicable norms and standards and having a principled approach in supporting its Member States in fulfilling their said international obligations in this regard.

B. STATUS AND SCOPE

7. This policy is binding on all staff of the Organization and applies to all its activities.
8. This policy should be used to consistently mainstream a rights-based approach in IOM policies, strategies, projects and activities.
9. The policy also demonstrates to all external stakeholders, including States, other intergovernmental organizations, partners, donors and civil society, the approach applicable within IOM and the resulting protection of migrants undertaken by the Organization.

C. POLICY STATEMENT

10. As an intergovernmental organization and the leading global agency in the field of migration, IOM is mandated by its Constitution and the policy documents adopted by its Member States to contribute to the protection of migrants.⁶ IOM does this by emphasizing the promotion of the dignity of migrants, their well-being and respect for their rights and by adopting a rights-based approach in all its policies, strategies, projects and activities, going beyond simply the physical and material needs of migrants.

⁵ Protection of persons involved in migration: Note on IOM's role (IC/2007/3) of 18 April 2007.

⁶ See International Court of Justice, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 73, on pp. 89–90: "International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties." See also Andrew Clapham, *Human Rights Obligations of Non-State Actors*, (1st ed., 2006), pp. 68–69, p. 83, pp. 109–110, p. 127, p. 131, p. 316); and p. 80: "If international law is to be effective in protecting human rights, everyone should be prohibited from assisting governments in violating those principles, or indeed prohibited from violating such principles themselves." See also George Kent, "The Human Rights Obligations of Intergovernmental Organizations", *UN Chronicle*, Vol. 42, No. 3, September–November 2005, pp. 32–33: "The intergovernmental agencies do not ratify treaties directly, but the view taken is that as agents of the States that are parties to these agreements they are nevertheless subject to international human rights law".

11. IOM acknowledges that the primary duty to protect migrants and their rights lies with States, and recognizes their sovereign right to determine admission and residence of non-nationals on their territory. IOM, meeting its obligation to promote and contribute to the protection of migrants, engages in supportive protection of migrants by supporting States and its other partners in their respective protection responsibilities resulting in increased protection of migrants, sometimes directly and sometimes more indirectly.
12. IOM understands protection of migrants to mean an obligation to respect, protect and fulfil the rights of individuals and an obligation by States to do so in respect of all individuals on their territory or under their jurisdiction, regardless of their nationality, statelessness or migration status and without discrimination, in order to preserve in particular their safety, physical integrity and dignity. Protection is about securing rights.⁷ Migrant protection involves activities that seek to secure directly individual or group rights, as well as activities that aim to create a society in which individual and group rights are recognized and upheld. This notion is paramount since it underpins the idea that individuals are protected from violation of their rights even when a clear and direct threat to any right is not imminent, and thus the action is not necessarily directly aimed at the individual(s) in question but at establishing a general condition of respect of rights and thus of the migrant(s).
13. IOM's policies, strategies, projects and activities are rights-based, namely developed and conducted in accordance with international migration law, which includes norms and standards of human rights law, refugee law, labour law, humanitarian law, maritime law, law of the sea, transnational criminal law, nationality law and consular law at the international, regional and national levels.
14. A rights-based approach is a conceptual framework and useful tool, which is based on rights derived from international law and operationally directed to respecting, protecting, fulfilling or promoting those rights. Human rights have gained prominence as a universal set of norms and standards that are increasingly shaping the action and programming of intergovernmental organizations. For IOM's policies, strategies, projects and activities, the framework is broadened to include rights deriving from other sources of international law besides human rights, including refugee law, labour law, humanitarian law, maritime law, law of the sea, transnational criminal law, nationality law and consular law.
15. The rights-based approach to protection as a concept starts at the rationale for the activities, be they supportive or substitutive in nature, aimed at obtaining the respect, protection, fulfilment or promotion of rights. The activities include efforts to prevent or stop actual or potential violations of relevant bodies of law or norms.⁸ Protection relates firstly to the causes of, or the circumstances that lead to, violations and secondly to their consequences. This understanding of protection also includes activities that seek to make individuals more secure and to limit the threats they face, by reducing their vulnerability or their exposure to risks.
16. IOM's policy of supportive protection is distinguishable from substitutive protection, which is a responsibility that has been conferred on some other organizations and bodies by States through specific and limited international treaties. Substitutive protection stands in addition to the primary protection role of States.
17. IOM's policy of supportive protection encompasses:

⁷ IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (2011), p. 6.

⁸ ICRC Protection Policy: Institutional Policy, *International Review of the Red Cross*, Vol. 90, No. 871, September 2008, p. 752.

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- (a) Activities that have as their primary direct objective the protection of migrants and their rights. Such activities will typically have an immediate or direct effect on the situation of migrants, resulting in rapid increased protection;
- (b) Activities that result in the protection of migrants and their rights, but where such protection is either a complementary objective or a consequence of a different primary objective. Such activities will typically have longer-term goals or effect, often a structural impact on governance, legislation, policies or practices, fostering an environment conducive to respect for those rights, even if there is another primary goal identified with the programme.

D. CONCLUSION

18. In accordance with the above, IOM's policy to comply with its mandate to contribute to the protection of migrants and their rights is to do so through the promotion of their dignity and well-being as well as the respect, protection and fulfilment for and of their rights, be it as a direct objective or an indirect outcome of the Organization's activities and in accordance with international law. IOM implements its supportive protection role by having a rights-based approach to all its policies, strategies, projects and activities.
19. IOM's activities can protect a myriad of rights, including the right to access to justice, remedy and reparation, family, social security, health, education, decent standards of work, decent standard of living, non-discrimination, privacy and data protection. The results of its activities can either be immediate or longer term. Protection activities of the Organization can be preventative, responsive or remedial as well as aimed at building an environment conducive to the respect of migrants and their rights.
20. The protection provided by IOM focuses on effective implementation of existing norms and standards related to the rights of migrants, found at the international, regional and national levels. These standards and rights are not abstract or rhetorical notions: they have specific contents and can be claimed, and their effective implementation requires specific and concrete action. On this basis IOM responds, in cooperation with and with the support of States, to the affected populations' needs in a manner that ensures their impartial protection and that of their rights, through its policies, strategies, projects and activities.