

VERBATIM RECORD OF THE HALF-DAY SPECIAL MEETING ON "INTERNATIONAL LAW ON MIGRATION" HELD ON THURSDAY, 6TH APRIL 2006 AT 10.00 AM

Vice-President: We begin our day. Today's work with AALCO-IOM, International Law on Migration, half day special meeting and we will begin with special remarks from Secretary-General Amb. Wafik Kamil, Secretary-General, and Most Welcome.

Secretary-General: Good Morning Ladies and Gentleman, Sorry for the delay. I welcome all of you to this half day special meeting which is the last one in the series of the meetings and as it was very alive yesterday, we hope that today also we will give you enough data and enough presentations and have a very fruitful day along with the panelist who came all the way from Geneva, Ms. Jillyane Redpath and Mr. Vassilly Yuzhanin from the International Organization for Migration, from Geneva. So, on behalf of AALCO I welcome all of you to this special meeting have been organized between the AALCO and IOM. In fact this is not the first meeting of this nature because AALCO in co-operation with IOM had organized already a one day special meeting in conjunction with the fortieth Session, which was also held in the Headquarters to discuss some legal problems and issues related to Migration.

The ever-expanding phenomenon of international migration has long been on the global policy agenda. The need to manage the issue of migration in order to ensure that the migration process benefits all involved, both States and migrants, is intensely felt by the community of States. Asian and African region are not an exception in this regard on the countries suffered a lot. The issue of management of migration assumes immense importance for many countries keeping in view role of the migrant workers in the economies of the receiving countries.

Moreover, migration represents an area where two competing concerns meet; States while exercising their sovereign right to determine who enters and remains in their territory also has the responsibility and

obligation to protect the rights of migrants on their territory. The international legal regime on the protection of migrant workers, in particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, seeks to provide protection to both regular and irregular migrant workers.

So, realizing the importance of the matter, the item entitled "Legal Protection of Migrant Workers" was included on the agenda of the AALCO upon a reference made by the Government of Philippines in 1996. A Resolution adopted at the Tehran Session (1997) mandated the Secretariat to study the utility of having Model Legislation on the Legal Protection of Migrant Workers.

In the year 2000 a fresh impetus was given to this work when the AALCO entered into a Cooperation Agreement with the International Organization for Migration (IOM). One of the very important outcomes of that Agreement was the Organization of a one-day Special Meeting in conjunction with the 40th Session of AALCO to discuss some legal problems and issues related to migration.

In the wake of the "Special Day Meeting on Some Legal Aspects of Migration" held in 2001, at the 40th Session of AALCO, a Resolution was adopted which mandated the Secretariat and the Secretary-General to explore the feasibility of drafting a "Model Agreement for Cooperation among Member States on issues relating to Migrant Workers". In pursuance of this, the Draft Model Agreement was prepared by the Secretariat in collaboration with the IOM. This draft agreement takes into account the relevant international instruments as well as the domestic legislation of some Member States, which have kindly send us, the Model Legislation. Once adopted, this Agreement will be an important contribution by AALCO to the resolution of migrant issues as well as to human rights law in a broader sense.

Today's meeting is being organized to focus on various complex dimensions of international migration. We have distinguished panelists today. I hope that the presentations and discussions on the topics will help delegations to formulate their positions on

migration related issues. One of the important purposes of this meeting is also to seek the comments of Member States on the "Revised Draft Model Regional Co-Operation Agreement Between States of Origin and States of Destination/Employment Within AALCO Member States". Comments and inputs of Member States are extremely important for the early adoption of the Agreement. Therefore I take this opportunity to reiterate the request to Member States to communicate their comments and suggestions to the Secretariat as early as possible.

I will not take more than that Mr. President, and we are in the hands of our panelist to give us the latest information about the Migration Law. Thank you.

Ms. Jillyane Redpath: Excellencies, Distinguished Guests, Ladies and Gentleman, it's a pleasure for the International Organization for Migration or IOM to be able to participate in this 45th Golden Jubilee Session of AALCO; to that end we thank Amb. Kamil for his invitation towards an interesting discussion for today. We hope to be able to contribute to this in the context of Migration issues in this Session. Some of you will be more familiar with the International Organization for Migration or IOM than others. So perhaps if I can give you a brief background about the Organization and the types of issues it is involved in. IOM is an Inter-Governmental Organization made up of, at the moment, 116 Member States. It's a very decentralized Organization and has its Headquarters in Geneva and the majority of its Officers, Staff and its activities take place in the field. At the moment we have approximately 280 field offices in all regions of the world around 5000 staff and a budget which approximately of last year was one billion dollars.

IOM works on a range of Migration related issues such as Trafficking in human beings or prevention of Trafficking, labour migration issues, assisted voluntary returns. It also is increasingly involved in the post emergency activities such as tsunami or earthquake in Pakistan. It also is involved in

the development of Migration policy at the international level and conducts research. Under its Constitution IOM is mandated to provide services to Migrants, Refugees, displaced persons, and others in need of Migration services. Certainly if one was to examine the development of the Organization in the last 5 to 7 years we have seen a doubling of its membership and a five-fold increase in its budget, its activities and its offices. And this very much reflects the increasing importance of migration and its impact at the national and international level. And also it shows the range of migration issues that many countries are facing.

To fulfill its role to States to promote orally and managed migration, IOM has strengthened and streamlined its involvement in International Migration Law, this took place and started last year. Why we have done this? There is no one comprehensive international instrument that deals with all aspects of migration. Indeed International Migration Law or IML (as I will refer to briefly) consist of various international conventions across a wide range of different branches of international law such as human rights law, humanitarian law to the extent that Non Combatants are displaced by armed conflict, worker's law or Labour Law and Refugee Law and there is no one central point where all these sources of law come together. Nor is easily accessible by virtue of the fact that it is in ceremony of different branches of law and they offer little attempt to understand how these instruments relate to each other. In addition to treaty norms or principles of customary international law there are also principles of State sovereignty that impact on management of migration. Such as the right or power of State or sovereign power of State to determine which non-nationals it admits to its territory or what conditions and under what conditions they will be removed and granted nationality and also the sovereign power of the State to protect its own security. So these principles also exist in the context of international migration law. Due to the diversity and disparity of norms and principles of standards, this contributes to the widespread beliefs that there are important gaps in international migration law, protecting migrants or in the context of regulating migration.

Moreover, there are sometimes uncertainties as to the exact content of these instruments and lack of knowledge on their status of ratification. As a result of this, the International Organization for Migration established a department on international migration law. There are five key functions of this department. Firstly, we are focusing on compilation of international migration law and one of the key activities in this regard is been the creation of database of all international and regional law relating to migration. And this is very recently been released and is accessible to the public through the internet. The intention also is to include national legislation in its database. Another activity of the department is involved in, is the dissemination and promotion of the understanding of the international migration law. We have, in the last year published a number of documents on international migration law and issues affecting migration. Some of you will have seen, we brought them with us and we have laid them on the front table and there are too many left. One of the documents we have published is a glossary on international migration terms because of the fact that migration has traditionally been managed at the national level we see that very diversity of terms used in describing migration context. And more what we sort to do in this glossary is to keep internationally accepted definitions of various migration terms, it is available in English and Arabic, the French is about to be released, its also available in various other languages. We have also been involved in training and capacity building with governments on international migration law and its incorporation into domestic law. And finally we are working on promoting International Migration Law as part of comprehensive migration management systems. So that's just the brief introduction on the types of activities this Organization is involved in. If you would like to have further information we would give it to you after the Session.

What we proposed to do in the time remaining is to divide in to two sections. In the first Session, before the coffee break, we will look at the general overview of International Migration Law. Firstly, looking at the Principles of State

Sovereignty and how international law has shaped the exercise of sovereignty in the context of migration management. And then my colleague Mr. Vassilly looks at specific international instruments from which international migration law is derived. In the Session after the coffee break we have chosen two topics, there are many topics involved in migration, there are many legal issues in migration as there are migration topics themselves, so we picked up the topics which might be of interest to you, one thing 'migrational security' with particular focus on the use of biometrics in the management of migration and another topic we would be looking at is, regional and international consultative processes for the management of migration and we hope to give you updates of different regional activities that have been taking place between governments and also developments at the international level.

So without further delay I would like to focus now on principles of State Sovereignty and how these are imparted or shaped by the international obligations that State have accepted. As we all know a fundamental principle of State Sovereignty, that the State has the authority to regulate the movement of persons across its borders that such power flows in the concept of an international system of State, where States possess the primary authority over its population and territory. This is not however, an absolute authority, in the context of managing migration. As I mentioned earlier, States are required to exercise its sovereign power to manage migration in accordance with international obligations under customary international law or treaty obligations that they have accepted. In the context of admission, under international law an individual has a right to leave his or her own territory. However, there is no corresponding right on a non-national to enter third territory. There is no obligation apart from the protection obligation under the 1951 Refugee Convention, for a state to commit entry to a non-national in to its territory. Thus a State is entitled to determine which non-nationals enter its State and on what conditions you can stay, say a prerequisite for entry and determine the time that a non-national is entitled to remain within its territory. And indeed as you all know, the policy governing at the admission can vary

considerably between the States. For example, often States use economic justifications to determine the admission policies, either they have a labour market need for certain types of individuals or they want to promote migration in that context or they want to protect the market and don't permit migrants into certain labour activities.

Admission can and is denied on the basis of financial considerations, concern in relation with health or disease, past criminal convictions, earlier violations of immigration law or concerns in relation to national security. Another option is that a State may take that they may enter into bilateral or regional agreements governing the admission of non-nationals on its territory. The perfect or the good example is that regional co-operation in this regard is the European Union where the Member States of European Union have agreed to principle of free movement of EU Member States Nationals, so that the individuals from those States can freely move within the region. So, we see under international law there are few restrictions on the power of States to determine which non-nationals enter into its territory.

In the context of rights, to remove a non-national, we see again this is often power of State which is relatively unaffected. The power to remove a non-national applies both to migrants in a regular situation and those in an irregular situation. However, the power to remove or expel, whatever you want to call it a non-national, there are more limitations under international law over this power of the State. The first is the principle of *non-refoulement*, which is, contained in Article 33 of the Refugee Convention and also is principles of the customary international law. Principle of non-refoulement as we all know is the prohibition on moving someone to the State where he or she is going to be subjected to persecution. In addition to this, principle of *non-refoulement* is in Article 3 of the Convention against Torture and this Article prohibits the removal of an individual to a place where he or she is going to be and subjected to torture. So we say that a

limitation in this regard on the part of the State to remove an individual.

Another international law principle that has limited the limits or moulds the shape or the way in which the States exercise its power to remove a non-national, is the concept of the 'best interests of the child'. This concept is found as articulated in Article 3 of the Convention on the Rights of the Child. In some circumstances, it is being used in the national jurisdictions to override the power of the State to remove a non-national. What we see in these types of case laws is that the national courts weighing up the interests of the child as essential for the family staying together and the interest of the State in removing the non-national. Perhaps if I can give you an example of this, in Australian context), in case in the late 1990's, where an individual was subject to be removed or had a removal order against him due to the fact of the criminal conviction in relation to serious drug offences. The individual had lived in the country of Australia for quiet sometime and have a child which had same nationality. And the Court held that despite the different factors evolved in the case, the severity of the crime and duration how long the person had been in the country, and held that the concept of 'best interest of the child' will override the removal decision and permit the non-national to remain in the country. And this situation is not unique to Australia, there is jurisprudence in many countries where this principle the best interest of the child is used by the domestic courts or its international obligations are used to guide administrative decision-making. Another principle that impacts on the power of the States to remove a non-national is the concept of the family unity and this is again related to the best interests of the child concept.

The 'principle of the family unity' is found in Article 17 of the International Covenant on Civil and Political Rights. Basically this requires or entitles a person to prohibit arbitrary or unlawful interference with family life. And essentially, in this case, that the key is arbitrary interference, and we see in the jurisprudence, applying this law but in Human Rights Committee, which is the treaty body, established under the International Covenant on Civil and Political Rights and also in domestic jurisdiction certainly in European

Union Context. We see again its weighing up in the State interest in removing the non-national usually for criminal conviction in the interest of child in this context family unity and deciding which of the two principles prevails a balancing act. So, therefore we see, in both of these contexts that international principles do impact on the power of the state to remove a non-national.

In addition to the substantive restrictions on the part of the State, removal of non-national, we also see under international law procedural limitations on the part of the State to remove. One of the particular articles, your attention to is Article 13 of the International Covenant on Civil and Political Rights. This article provides that an alien lawfully in the territory shall be expelled from there only in pursuance of a decision reached in accordance with the law and shall accept where compelling reasons of national security otherwise require the large reasons for his expulsion and to have his or her case reviewed before competent authority. So, we see under the international law, under the International Covenant on Civil and Political Rights we have these procedural limitations on the power to remove, I think, two things are worth noting in this regard. Firstly, this principle is known, which I have just read out, is applicable to aliens lawfully in the territory. So doesn't apply to migrants in an irregular situation. It is also worth noting that the security restriction on it, that these procedure protections can be overridden by security concerns. And we have certainly seen in the last few years that in exercising the power to remove non-nationals and using justification of state security.

Finally under international law norm, I would like to point out that impacts on the power of the States to remove a non-national is the provision on 'mass or collective expulsion'. This is contained in again in the International Covenant on Civil and Political Rights; it is also found in the Migrant Workers Convention and various regional Human Rights Instruments. And basically the prohibition on mass expulsion prohibits compelling aliens to live in a group, without a reasonable and objective examination of the individual case. The international law dealing with expulsion in a nutshell, also

other issues that are related to migration management that impact of the state sovereignty are the power of State to detain non-nationals. And also we see States exercising its power, firstly its power to removal so that it goes in conjunction with the removal and detention exercised together and also its used in some countries and works determining asylum claims. So these are the two different types of ways in which detention is exercised in a migration management context. Generally, there are two types of the detention exercised, namely, Administrative detention or Criminal detention. And generally speaking, they do depend on the national domestic context which often breaches immigration law is treated as an administrative breach and administrative detention results may be different in your country but often administrative detention is used. The weakness of this is that draw back from an individual perspective, there is very little international law governing administrative detention.

I think the key principle in the context of detention is this prohibition of arbitrariness. So, detention is permitted and one article to be referred is Article 9 of International Covenant on Civil and Political Rights, detention is permitted however, it cannot be arbitrary. The Human Rights Committee, which is an international body, established under the International Covenant on Civil and Political Rights, has looked at administrative detention particularly in the context of the asylum seekers and has articulated few guidelines in relation to how this should be exercised. In particular, a look at the prolonged detention and the length of the detention and look whether it is necessary and are also required periodical view. So we again say detention is not *per se* prohibited however it must be necessary, it must not be prolonged unnecessarily and has to be subject to periodic review. Also the nature of the review needs to be an affective remedy that the body that is reviewing the detention can overturn its detention if it finds that it does not confirm with those requirements.

Another principle of State Sovereignty, that we say often visualize or it is very relevant to the sovereignty is the sovereign power of the state to protect its national security. And I will

talk about in detail after the break. The international human rights law fully recognizes the power of the state to take measures to protect its own security and it does permit the State to limit human rights in certain circumstances or to derogate from meaning to suspend certain human rights in times of national emergency. And as in the context of expulsion and detention we have seen states using this power quite liberally in the context of post-September 11 environment where migrants have very much been targeted by virtue of the fact that they are non nationals. I will not delve much on the concept on issue of security, because I will deal with it after the break.

The final principle of state sovereignty that I would like to highlight in migration management is the granting of nationality. It is the sovereign power of the State to grant its nationality to non-nationals. And we spoke about little yesterday in the context of Statelessness. As we say, nationality is a legal term but do not consist of a legal tie between individual and state. One important principle under international law is that no one shall be alone as a right to nationality and no one shall be arbitrarily deprived of his nationality. And as a result, we discussed yesterday Statelessness should be awarded. In principle, the question of nationality falls squarely within the domestic jurisdiction of the state. And there is now international law governing the granting of nationality. Thus, under the general principles of international law an individual has a right to a nationality but the conditions upon which it is conveyed, generally speaking, is up to the individual States. So, each State determines under its own law who are its nationals and this law is to be recognized by other states to the extent that it is consistent with international law, international customs and principles of generally accepted with regard to the nationality.

The two main principles upon which nationality is conferred are generally speaking are *jus sanguinis* and *jus soli*. So, your parents have a nationality you get a nationality or you are born in a territory of the state and these two principles are mutually exclusive. A state can use both of

them, or can use one of them. Other criteria that are often used to determine the nationality would be permanent residence, adoption or marriage, their standards of criteria used. The limitations imposed by international law, refer mainly to the consequences of nationality in international sphere; if for example, the criteria for granting nationality are not accepted. An example of these have been cited as not accepted or nor acceptable, are naturalization of persons having no link with the state so for example I am country A, I can say all citizens of country B shall now have my nationality. That doesn't happen and would not be acceptable. And also granting the nationality to aliens automatically on acquiring real estate. I also like to highlight in the context of loss of nationality, this can be due to the act of the individual or to the nationals state. And again it is up to state law to determine on what circumstances this happens. However, it is important that laws of nationality, this is one of the few international principles applying in this regard. It's important that the laws of nationality only occurs if individual has another nationality. So, again we are talking about awarding statelessness.

I think the final issue I would like to highlight in the context of the nationality is the concept of dual nationality. This also is not prohibited and permitted under international law and many States allow two nationalities. Other states insisting upon one nationality and again that is up to the national jurisdiction of the domestic law of the particular state. Some states find that dual nationality allows the non-nationals to retain their ties to the home country but also facilitate granting them the nationality of the host country facilitate integration within the new society. Other States don't think that dual nationality is good thing and it only require on taking up the nationality that the individual to relinquish the old nationality. So we can say that it is up to domestic law and the time of issue here is that on relinquishing will not result in statelessness, accidentally or intentionally. So that is in a nutshell and in a short amount of time the international principles that impact on the power of the state to exercise or to manage its migration. There are not a lots of principles mostly the state retain this whole power to manage migration but there are treaty

obligation that states had taken as customary international law which do shape the exercise of this power. I think perhaps the key point from this could be to draw that states are vital components or the states sovereign power in migration management is respect for human rights of the individual. These three concepts are not mutually exclusive and an important component of migration management is the human rights of the individual. I would now like to turn on to my colleague Vassilly who now go through the core international human rights instruments that impact on migration management. As I said at the starting, international migration law is very broadly taken from a number of different parts of law. What we want to look at in this next part is those international treaties that apply to all individuals involved in the migration process, not a particular individual category. So, this is the baseline that applies to all individuals who are involved in migration.

Mr. Vassilly Yuzhanin : I would like to use the power point presentation in order to present the subject. Your Excellencies, Distinguished Representatives and Delegates, Ladies and Gentleman, as you can see my presentation will be focused on introduction to international migration law. This is quiet relatively new branch of international law and I would like to start at the main principles and main peculiarities of this law. Actually, I am also dealing with the basis of this law on the basic instruments that form this relatively new branch of international law. Well, as any branch of law, international migration law, it has its own subject which is coming from the name of this law it is international migration. It has its own actors and the number of actors is quite numerous. When we speak about the international migration law among the actors we can definitely name the governments or the countries, the States and these will not only be the countries of origin or the countries of destination, that will be also countries of transit for instance, the country or States are concerned by the migration from one country to another.

That can be definitely for migrant as well the human beings and the individuals that are the subject of the main actors of

international migration law. These are also representatives of so called sector that can be private companies and private entities, legal entities, for instance the international courier companies or the international transportation companies and also legal entities that had their role in the process of international migration. Also the relations, which regulated by international migration law are coming or arising from the international migration process. There are certain peculiarities, I think we have to mention when we speak about the international migration law. First of all one of the important thing is that there is no worldwide legislation. There is no world wide central body that issues or adopts or implements the instruments and provisions of the international migration law, like for example we had the international body that adopts and guards the international labour law like International Labour Organization. Here we have different authorities different entities that adopt the norms of international migration law. Well, another important issue is that there is, as it was already mentioned that there is no key or global or universal document that regulates all the relations in the area of migration, that regulates all the phenomena that we see in migration that regulates all the migration processes. And that concerns all the categories of migrants we see in migration process.

We have number of documents coming from different branches of international law and we have all these documents that apply according to the contexts and apply according to the situation of the particular instances. These different instruments were developed over certain time. Some of them are quite old some of them as long as also fifty years old and some of them are relatively new about five or six years old. And as I said they are compiled from different branches of international law. What are the main sources of international migration law? Several of them has been mentioned already this of course includes the human rights law that is applicable to all migrants, migrant workers law, refugee law and humanitarian law which we have been discussing yesterday, international criminal law as well and of course this list is not exhaustive. We can for instance mention the important branch of international law as such as the Law of the Sea and especially its

provisions related to the issue of rescue at sea. So there are some other branches of international law that can be important in the migration context and in the situation where we consider certain migration situations.

I propose that we will have a little bit close look at the first three mentioned here in the list, human rights, migrants workers, and international criminal law and well of course the human rights law is one of the most important sources of international migration law. When we speak about migrants and people who are on move who migrate from one country to another definitely we speak about human beings and of course the human rights will be applicable to them as well as per the human beings. The human rights they are inalienable and we cannot say they belong to one person and they do not belong to another person and definitely here we can speak that the human rights basic and fundamental human rights will also be belonging to all categories of migrants both regular as staying on a regular basis on the territory of the state and staying on an irregular basis on the territory of the state, still the irregular migrants will have the basic and fundamental human rights. The important thing to mention about the human rights is that they are not absolute, well there is certain human rights that can be derogated by state in case of public emergency. And definitely we have also number of fundamental human rights that cannot be derogated. So, again having spoken about the human rights and the main provisions of the human rights law we always mention certain important provisions that we can find in the human rights law that are relevant to migration. Well, I quoted some of the provisions that you can see on the slide and they are quoted from the Universal Declaration of Human Rights and particularly from Articles 13, 14, 15 and 16 and these are the principle of freedom of movement, right to seek asylum, right to nationality and provisions related to family protection and unity. Definitely we all know about one of the main principles of human rights law related to migration is the right of any individual to leave any country and of nationals to return to their own country.

So, what are the main instruments that formed the international migration law at and that come from the international human rights law. Well, of course we have to mention the Universal Declaration of Human Rights which covers a common standard and which has important principles of Equality and the non-discrimination and equality of all human beings. This document is rather old it is one of the international documents, but this is a declaration, this is not a binding document and for us as lawyers when we speak about laws it's important to mention binding document. One of the examples could be the ICCPR, the International Convention on Civil and Political Rights. These international instruments have almost all the provisions that are reflected in the Universal Declaration on Human Rights. This document is binding document and moreover and more important it has an enforcing mechanism, so it can be enforced on international level. And this document provides a range of civil and political rights to migrants, it requires the states to assure to all individuals within its territory and subject to its jurisdiction and it also contains non-discrimination clause.

Another important document in this context and that is also very close to the International Covenant on Civil and Political Rights is the International Covenant on Economic Social and Cultural Rights. That document provides range of civil and political rights to all human beings including Migrants and distinguishes between nationals and non-nationals. The limits the rights of non-nationals by allowing developing countries to determine to what extent they provide economic rights to migrants. Another important document for the international migration law is the Convention on Elimination of Racial Discrimination. And this is particularly important for migrants at that present on the territory of the receiving states. Well these document provides a wide range of measures and cost the State to take all the measures to avoid racial discrimination, it provides the definition of the racial discrimination and ICESCR also provides a provision that allows different treatment between nationals and non nationals on national law of the State. The document that was mentioned yesterday in the context of nationality, the Convention on Elimination and Discrimination against Women and this

document is very important in the sense that the first, it is the first document that mentions such phenomena as trafficking in women and it obliges States to suppress all forms of trafficking in women and it also calls the state to uphold the rights of all women including women migrants.

Convention against Torture was also mentioned to the important provision reflected in Article 3 of this Convention is the prohibition on returning a person to State where he or she may face torture. This is an important *non-refoulement* mechanism that is stipulated in this document. The Convention on the Rights of the Child, this Convention sets the standards of treatment of all children and child according to this Convention is any person below the age of 18. Well this document is very important because it is the most widely ratified, has 192 States Parties to this Convention and of course it is important because it provides the rights to all children residing on the territory of the state, even the children of regular migrants, or the children in regular situation and of course through certain number of rights, the children are entitled for under this document and the parents of the child also required certain rights through this.

One of the key documents, on the international migration law is the document that you can see here on this slide, the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families, Migrant Workers Convention to be short. We will talk a little more in detail on these documents but before this I would like to mention that this document is both new and old. It is old because the development of this document started in early 1980's and took 10 years for this document to be developed to be adopted. It was adopted in 1990 and it took another 13 years for this document to come into force, so that is why it is relatively new because it has come in to force just recently three years ago. And it has for the time being 34 States parties to this Convention. Before we have a closer look on this document I would like to mention some other documents that are part of international migration law and also a part of international migrant workers law.

The two documents that are important to mention is the ILO Convention No. 97, that is applicable only to lawful resident migrant workers and also the ILO Convention No. 143 of 1975 that also provide some basic human rights for migrant workers. These two documents are good to keep in mind in the context of when we refer to international migrant workers law.

Back to Migrant Workers Convention you can see here the number of States that are parties to this Convention, and these are mainly the sending States. The document itself is a comprehensive instrument applicable to all migrant workers and it covers the process of the departure, the process of presence of migrant worker on the territory of State of destination and also return. This document protects the basic human rights of irregular migrants as well and members of their families and this document grants certain new rights to regular migrants. I would like to stop little bit on the issue that is relevant and acts as an obstacle on the way of wide ratification of this document. Why it is not ratified by larger number of countries and why it is ratified mostly by sending countries and what is the problem and where the problem stands? So basically one of the main problems is that at there are quite a lot of misconceptions existing regarding this document. One of them is the misconception concerning that the document provides a lot of rights to irregular migrants which is in fact not like this. The document just mentions the basic and fundamental human rights of irregular migrants and all these rights are coming from already existing other norms of human rights law namely from ICCPR and ICESCR and other human rights document. In fact, it does not provide and new extra rights to irregular migrants. Another obstacle that can be mentioned probably is the length of the document. This is one of the longest or biggest international instrument, it has 93 articles rather extensive rather complicated. Why it is so because as you can see here is the Convention structure, and for instance part II and III are relevant to basic and main rights that are relevant to all migrant workers. This I said they are coming from an average existing human rights instruments. They are basically repeating lot of human rights instruments that are reflected in this document. Well, so probably this is one of the

things that can be named as an obstacle for non-ratification of these document because some of the States also considered that this norms are already existing in another documents like International Covenant on Civil and Political Rights and they cover the rights of regular migrant workers or migrant workers in general and there is no need to ratify this document. Another important issue, is of labour migration, is usually covered on the national level by various agencies and various entities and ministries. And all these needed a long process of co-ordination between these agencies to agree on the ratification of the document.

The final set of the presentation concerned in the international migration law, I will speak about the International criminal law instruments and for us in this context the most important document is the United Nations Convention against Transnational Organized Crime and its two Protocols, one on Smuggling and another on Trafficking. This document is quite important. As I said that this is not a part of the international human rights law, this is a part of international criminal law. This is more police instrument, but it is important for us because it goes to uphold and protect the rights of victims of smuggling and trafficking. It also symbolizes recognition of the problem. Two Protocols they separately deal with two criminal phenomena such as Smuggling and Trafficking. And this instrument they provide an extensive definitions and notions on Smuggling and Trafficking. If you have a look at the definition of the smuggling in the Smuggling Protocol, smuggling of migrants should mean procurement in order to obtain directly or indirectly a financial or material benefit of the illegal entry of a person into a state party of which the person is not a national or permanent resident. So the Protocol provides the definition of smuggling. It also cost the State to criminalize smuggling, it cost the State to co-operate to prevent smuggling, it costs the States to strengthen border control and address the root causes and to cooperate on return.

Today after lunch I understand the agenda item is on more detailed discussion on

trafficking and smuggling, so I don't think there is a need to focus on it in detail, now I will just briefly mention the Trafficking Protocol and in brief the differences between these two phenomena "smuggling" and "trafficking". Usually they are coming very close with each other and some time trafficking just stop and smuggling case starts and sometime smuggling can be prolonged and become trafficking case and usually these two notions, these two crimes makes what is smuggling and what is trafficking. And the main difference between these two phenomena is as you can see from the definition of trafficking and as it was visible from the definition of smuggling, there is no mention of means in the definition of smuggling, while there is a mention of means in the definition of trafficking and the means here are very important. Another important thing is the final purpose of the process of smuggling is putting an individual into slavery and slavery like conditions into exploitation. Well the final papers of smuggling is just illegal crossing of the border and bringing illegally regular migrant on the territory of another State and one of the most important differences is that trafficking is a crime against an individual and human being and smuggling is usually a crime against the State and State security. So, these are several main differences between these two phenomena. And in the end of my presentation I would like to mention briefly the main purposes of the Trafficking Protocol. It definitely defines and standardizes the terminology. It requires state to criminalize the phenomena of trafficking, it proposes assistance and protection of victims of trafficking, it cost and provides certain measures for protection and repatriation of victims of the trafficking, it proposes certain counter measures and it proposes the measures on training for border guards research and information measures and data sharing. So, these are in brief the main provisions and the main sources of the international migration law that we overview during the presentation and the last Session after lunch if there would be any questions, I would be very much pleased to answer that. Thank you very much for your attention.

Vice-President: I thank two delegates for their eminent and well presented speeches. As we said in the morning we are running short of

time we are requesting you to consider whatever that has been given either on the slides and the earlier statement by the first speaker. We now proceed for coffee and immediately after coffee we go into questions comments and other observations if necessary. OK. Thank you.

Vice-President: And before we call upon the presenters to proceed with their presentation I give the floor to Secretary-General for an announcement.

Secretary-General: Just we have to remind all the delegates that it is written in your schedule on the 9th, we would like to arrange for a trip to Agra and back on the same day. The buses will be leaving very early morning and bring you back to the hotel by 9 p.m. So, please we would like to book the bus and we will have to make all the logistics arrangements. All those who are really keen to go to Agra, please today before the lunch give their names to the Secretariat, either here or there they are waiting for you, so we can immediately start the arrangements, if the number is going enough to hire big bus or small bus whatever, so I request you to do it and help the Secretariat to make have enough time to make the arrangement. Thank you.

Vice President: Now distinguished delegates we have two presentations to be made. Administratively we shall deal with the first one "Migration as State Security" followed briefly by "International Co-operation in Migration Management: Global and Regional Initiatives". Thereafter the discussions will be open to the floor for questions, comments etc., we altogether, we agreed. OK. We proceed.

Ms. Jillyane Redpath: Thank you, Mr. Vice President. Just before we start on the next topic a few delegations have asked for during the break for the copy of the presentation. We don't have multiple copies, but I can e-mail to you, or Vassilly can e-mail then if you would like them. Please give us your card after that we can distribute them in that way. People also asked about the documentation, for example, the glossary and we had a biometrics paper on the tables well, these unfortunately we

couldn't carry so many in our suit cases. So we don't have any extra copies will come from Geneva but one thing I point out couple of things they are available in the internet, you can get the copy from the internet and alternatively I can again send them to you if you would like them, but you need to, or if you could give me your card and address we can do that for you.

The IOM website is www.iom.int. As I had mentioned earlier, the next topic will be discussion on migration security. There are many facets of International Migration and International Migration Law, and I had selected to in the limited amount of time we have available.

What we wanted to talk about in this section is 'state security'. And one aspect of that thing being use of biometrics in the management of migration, which has been increasing phenomenon in the last few years. Perhaps I would start with the general introduction to state sovereignty and then go on to the specific issue of biometrics. As I have mentioned already the power to protect one's security is the fundamental principle of State Sovereignty. And international human rights law very much acknowledges this and you can see in the text of the treaties, many treaties specific limitations on human rights are permitted in the name of State security. So number of rights can be limited on the ground of State security.

Similarly, the International Covenant on Civil and Political Rights, Article 4 paragraph 1 specifically allows for derogations of human rights. Derogations meaning, suspending human rights in times of national emergency. As we have already discussed, States are not at all recusant in using the State sovereignty to limit the human rights of the migrants in the name of State security. Now there has always been a tension between new arrivals/allowing new arrivals and protecting the interests of the States. However, when we are talking traditionally, security and migration has very much been taken in a broad sense. So Security not just physical security, we are talking about economic security and religious security, political security, for example, much more broad sense. Now a days, post September 11 when we talk about migration and security at

very much focused on physical security on the threat of terrorism. And since September 11 we had seen highlighting the concerns of the non-nationals could play to the physical security or the host country and its nationals. Indeed, migrants are being regarded with a form of suspicion than before whether they be asylum seekers, refugees or economic migrants. And many are unjustifiably being seen as potential enemies. And it is important to remember we believe in IOM that the majority of migrants are moving in searches for greater security themselves, whether it is a physical security or economic security. And pose a very little threat to the security of the host country. But we are seeing that increasingly migration procedures being used to combat terrorism. And terrorism is often seen as a migration issue, which we would argue is not necessarily, an issue of law enforcement or intelligence issue. We have seen a number of mechanisms being employed by States post September 11; in order to tighten immigration controls and we would be relevant in that, I am sure. Such techniques are being used are introduction of biometrics, increase in data exchange and border control, data entry control such as passenger pre-clearance and the posting of airline liaison officers abroad. So checking individuals as again on the plane in country of origin prior to the actual embarkation.

As I said, one point that I will particularly like to highlight in the next Session is looking at the use of biometrics in the management of migration. We are very much seen a key component at the international level in re-enforcing the security aspect of international migration, in the context that is use of biometrics system, both to promote security at the border and also to increase the integrity of travel documents and their issuance process. Now only a biometrics is introduced at the national level, but we also see increased call for and expectation of the exchange of biometric data between states we have certainly seen this in the context of the European Union and United States. And as a result of these we are seeing a greater accumulation of biometric data or non-national seeking to enter the territory but also the biometric data of nationals of the

country. So, generally speaking this is applying to all people who are involved in the migration process, nationals and non-nationals alike. This has serious implications for the human rights of the individual involved and this is not just an abstract concept of the individual, this is you and me. People, who or anyone who have traveled will be affected by the increased use of biometrics system in migration management.

What I would like to briefly highlight to look at in the next 20 minutes time available is the biometrics mechanisms that have been employed in the management of migration and how they work, look at the current development which we do not think we have time to do it but trying to do it but that paper will be having migration and biometrics and international migration highlights different country examples in the annex of what countries are doing in developing biometrics systems. And then I also like to quickly look at the impacts that the use of biometric has on the individual particularly in the context of their right to privacy, and also for the ability of the individuals to move freely and lawfully. And what I would propose is a number of mechanisms at the national and international level to ensure the adequate protection is provided for the individual safeguarding national security.

What is biometrics? Biometrics can be defined as “the automated means of identifying an individual through the measurement of distinguishing physiological or behavioural traits”. Biometric scanning is the process whereby biometric measurements are collected and enrolled in a computer system with the purpose of subsequently using the measurements to either verify a person’s identity or to search for his or her identity. There are two main functions, (i) verification and (ii) identification. In the migration management context the most frequently used biometric indicators are the iris that the unique coloured patterns in your eye that is unique to you and finger prints, which arose I mean the people are more familiar with finger printing because it is being used more broadly and also facial imaging.

ICAO, the International Civil Aviation Organization has adopted these three biometric

indications as the ones to be used in travel documents. Then what benefits does biometric provide? When compared with traditional forms of identification they firstly increase the certainty that the individual who is he or she claims to be and ensures the stronger link between the individual and their document, thereby reducing fraud and assisting in identifying *mala fide* travelers. It also can be used more officially to manage at border at a quicker process, the reading of biometric information. Biometrics is most commonly used in the migration management system to ensure the travel documents issuance system or it included in the actual document itself. So, one way, which they used, is to offer countries from using them as biometric log on functions for the officials who are issuing the travel document, so, whereby seeking to reduce fraud in issuance process. So, if I am issuing a biometric passport to you I log on as I am issuing the document, and you can see who issue the document, that I issue that document. Thereby reducing the fraud subsequently in issuance process, you can trace back to who issued that particular document. It's also been used in these application processes to ensure, to avoid multiple application under different names and also seeing included in the travel document itself particularly in the context of passports. One other mechanism is used for in the European level is managing migrant services once they are in the host country. So, if a migrant is entitled to social service benefits they are not getting the benefits under different names. So, these are all mechanism by which the security of migration management is enhanced.

The event of September 11 has had a dramatic impact on the use of biometric system in migration management. Prior to this date they were used on an ad hoc basis as prototype testing. One common way in which they were used is through frequent flyers, so frequent flyers could involve their biometrics information and offer their fingerprints or iris like for fast track lanes for their own convenience. So this is for the convenience of the individual, was selective, they could choose to do it. Biometrics and passports were under investigation prior to the state but the event of September 11

definitely expediated the development of the use of biometrics and also setting of timelines for the implementation. Since the State with biometrics industry has been forced to rapidly develop driven by government demand for technology to enhance board security, which combined high-level accuracy and speed up processing. So, there is more of demand for actual systems. And this has largely been driven by developments in the United States. We have also seen these three key areas in United States they take a biometric readings when you enter, and all non-nationals have the biometric reading, the finger prints taken on the entry and exit from the country, to know who is entering and who is exiting, that is the US-VISIT project and their programme. They are also using biometrics information in the visa application process, they require these countries have biometrics passports by certain date in order to continue the visa status. And of course even the United States this is having very widespread effect around the world. And another example of this is in the European Union where we see in response to the US requirements, but also response to our needs they are introducing and they taking measures to introduce biometrics into third country nationals in the visa application process. And are also incrementally introducing biometrics into their own passports. So we can see the biometrics impacting on non-nationals and nationals alike it's having a very widespread effect.

So, we know that biometrics have many benefits in securing the migration management process. However, as I mentioned at the outset, there are a number of human rights implications or implications for the individual in the introduction of the systems. And it is very important that policy development State note this consideration in the early stages of development of systems.

Focusing Test on Privacy: The privacy risks inherent to the use of biometrics in as migration management are the same is those risks that the use of biometrics poses in the general community. So we have risk of functional creep that biometric information collected for one purpose could potentially be used for another purpose, law does not regulate it. So for example in the context of non-nationals it could be also nationals,

biometrics collected for passport could also be used in detecting crime. Another example of risk in the context of privacy and use of biometrics is clandestine tracking. There is collective lot of biometric information, which can be used to track the movements of an individual. And in the context of non-nationals un-warranted collection of biometric data could again results in monitoring the movement of the non-national in the discriminatory way once they are in the territory of the host country.

Another privacy risk in the context of biometrics is that it could divulge further information. Lets take for example the iris, the unique patterns of the iris scan in addition to it the medical experts also conveys additional health information about the individual. So biometrics could be used to measure this type of the individual's health, apparently it also shows whether an individual is pregnant or not. And perhaps the final privacy implication in use of biometrics is access to information, biometrics are stored computer system. Computer systems are subjected to hacking, biometrics systems are different. And given unique time of the identity to the individual should some one use their biometrics for my name there would produce serious consequences for me as the true holder of my name. So that, we have far reaching implications in use of biometrics that have to be managed appropriately. The potential threat that biometrics have for the individual generally speaking are usually concentrated in a domestic context, so they are relevant to the national context. However, given the nature of international migration, there use in migration management has formed broad implications for the right to privacy of the individual. And some of these potential threats are real at the moment. One potential is that we see collection of large databases of biometric information potentially being exchanged to different countries, with this standard of privacy protection exists. Also to some extent there is a great incompatibility between systems at the moment between national systems. However, increasingly we are moving towards greater compatibility between biometric systems in different countries which will again result interoperability

across all aspects or components of biometric solutions.

And thirdly, we have seen there are number of different actors involved in the process. Not only a governmental body is collecting and using these informations, but also increasingly third parties such as private airlines are having access to biometric information. So there is a number of different privacy issues that are arise in addition to the standard issues that arise when we talk about biometrics. Given these new challenges that biometrics introduced in international migration management, consideration should be given at the outset that I said introduction of the systems which is the face we genuinely still in, to ensure there protective mechanisms exist at the national and international levels. The rights of privacy or the protection from an intrusion into ones personal sphere being in its contact ones personal information is protected under international law, various international human rights instruments in International Covenants on Civil and Political Rights, the Migrant Workers Convention and various Regional Treaties also deal with the Right to Privacy. This right to protection of privacy applies to all individuals, nationals and non-nationals alike and also there is not a distinction between migrants or non-nationals in an irregular situation and those in a regular situation.

The Human Rights Committee, the treaty bodies established under the International Covenant on Civil and Political Rights highlight the right to privacy should be guaranteed against all arbitrary interference. So, not only emanating from the State authorities but also private individuals or private legal entities. A number of guidelines have been established under international law but are purely soft law, they are not hard law treaty obligations there is a number of soft law guidelines that have been developed over the years by the OECD, by the UN which seek to protect electronic data. I wanted to deal in detail the biometrics paper that I had mentioned, it is available on internet, does go through it in detail. But essentially, it requires things like principles that include the data to be obtained in accordance with the law and with the knowledge or consent to the individual but the purpose of data collection

should be known at the time of collection, that the data should be kept accurate and up to date, that the data like to give rise to unlawful or arbitrary discrimination should not be compiled unless appropriate safeguard exists in domestic law, that the data should be adequately protected from security risks, and the policies and practices in relation to the data should be as transparent as possible.

Was these general policies or principles helpful that give rise to a number of issues that governments should take into account, only consider when implementing biometric systems. And all governments face this do at one stage now or in ten years. A couple of points are highlighted. After how many years should biometric data be collected in the context of migration management, be retained or when should we seized to be required? Should there be a limit on storage of such data? At what age should start to collect biometrics data? It's hard to think that the biometric data of five years old will be necessary to collect. Similarly, the upper age limit when should one cease to collect again do you want to collect a biometric data of some one who may be eighty. What mechanism should be put in place to ensure that biometrics data is up to date. For example, facial imaging has been shown to be less accurate as the years go on. So, what mechanisms do you put in place to show that accuracy is maintained. Further, what sort of information should you collect in addition to the biometric data? What information should be stored with that? Biometric data *per se* does not give rise, for example, to information. However, supporting information may be used for discriminatory purposes. Similarly, I mentioned earlier that iris reading could help to divert information of oneself. This too could be used at discriminatory purpose.

Another consideration that a government should take into account into developing migration systems, is with whom and in what circumstances should biometric data be shared? Who is responsible and accountable if there is improper use of information. And what recourse should be available? Finally, an issue to consider as what degree of transparency we wanted to include in make

available in the process? Particularly, in the context of national security it's difficult to get a balance but these things should be considered. And as I dealt earlier, it is important that these and related issues are just at the infant stage of the development of the biometrics systems. In order to ensure the rest of dichotomy between State security and human rights of the individual are adequately protected. Similarly, it is necessary such a framework is established, a legal framework is established from the out set of policy development to ensure the policy imperatives are driving the technology and not technology driving the policy.

I would suggest that a couple of considerations would help in achieving its balance between the two possibilities, between State security and human rights of the individual. There are national legislations and appropriate mechanisms that are put in the place to ensure the accountability of them operating the systems. In particular, independent monitors are to be established at national and international level to show such accountability. I request security needs to be build into the system from the outset and use of a biometrics in migration management should be clearly established in national law and where relevant regional law, and legislation should apply in all entities involved in the process, like government entities as well as private entities. The committed use of the data should be specified and its use should be based firmly in necessity. Related to this, in case of biometrics, the information collected and its use should be proportionate to the ends sort to be achieved through its collection. And these two principles proportionality and necessity are fundamental human rights principles, they are not new, but in this context it becomes very important.

Finally, privacy legislation in domestic system should upon adequate protection to the biometric data collected for non-nationals and any distinction between nationals and non-nationals should be justifiable. Henceforth, the consideration given the truly international nature of the migration process and use of biometrics consideration could be given to international supervisory body, it could be used for the monetary use of the migrational security biometrics and facilitate the

development of principles would appoint those to governments and private entities. I also wanted to highlight and discuss privacy there are also implications for ability of the individual to move freely and lawfully. Very often people associate biometrics with absolute infallibility. Biometrics are not infallible. They involve false rejection, so I say I am Jillyane Redpath and in the biometrics system wrongly rejects me as Jillyane Redpath. It has accepted me as Vassilly, I say I am not Vassilly and the machine accepts me as Vassilly, false acceptance. It also involves a degree of failure to acquire and failure to involve approximately 5% of the people does not have readable finger prints because of the manual nature of the work. So these people can't be involved in the biometric systems. What do you do in these circumstances. This is the context of first positive studies in the context of the European Union showed that between 0.5% and 1 %, there are chances that falsely rejecting me a person that I am. That 0.5% to 1% false rejection is no more reliable.

The fallibility of biometric systems has prompted commentators to call for systems to provide secondary inspection and there are a number of secondary procedures which need to be put in place, they go hand in hand with the use of biometrics in migration management. This can be a secondary inspection at the border, if there is a problem with the document or if the person alleges that there is a first biometric reading, there is a secondary inspection process, and this is nothing new in migration management. Second point, the inspection processes exist and the principles that they are currently relying on very helpful in this regard. But in spite of this fact, the biometrics is not infallible and they are necessary. In the context of these issuance and passport issuance or rejection of the board, particularly in the context of the non-nationals as we said earlier there is no right of a non-national to enter the country however the decision to refuse admission over a non-national should not be based on error fact. So we would suggest consideration be given to appear procedures whether may be on paper or once a person has been returned to the home country that

may be given some possible recourse in event of alleged erroneous false biometric reading. I could go on and on but for what time constraints. I really wanted to point out is that biometric in management of migration provide many useful functions. And biometrics are increasing in the migration management context. No government wants to be seen as the 'weak link' in securing international, or national borders. However, is the biometrics to promote security of the state and human rights of the individual are not mutually exclusive. They can be balanced and we can have biometrics being used in a way that respects the human rights of the individual. I have pointed in my presentation in this context that we consider in implementation of these systems. Relevant issues that impact on individual have to create legal frameworks that adequately protect and regulate the use of the systems. Thank you.

Mr. Vassilly Yuzhanin: Thank you very much. Your Excellencies, Distinguished Delegates, Ladies and Gentleman, the last Session which I will be covering and the topic is "International Co-operation in Migration Management: Global and Regional Initiatives". The main target of the presentation would be three issues, one is why international co-operation in fact is needed. The second one is would be the forms we have brief look at the forms of international co-operation and also the last point we will have a short overview of some of the regional co-operation processes one of the forms of the international co-operation. Well, if we pass to the first issue why international co-operation on migration is needed? Well, definitely I think the answers are quite obvious. First of all, the countries that are build in effective scheme from migration management need to join the efforts in migration management process. They need to join their sources and their time and resources they have in order to give effects to migration management mechanisms. This is the way to save costs and the time resources, this is the way to get experience of other players in migration context of other states that have experience in the area of migration management in different sectors of migration management. Another thing why the international co-operation is so important is, for instance, if we will take the issue of trafficking and smuggling, well we all

know that this is the phenomena, which is executed or which has the involvement of the different transnational organized criminal groups. In order to address this issue, and to have an effective preventive measures against trafficking and smuggling and in order to prosecute transnational criminal groups, these States do need to co-operate on this issue and to have the transnational response to these transnational challenges.

Another important issue, for instance, if we take labour migration, it is hardly possible to take an effective schemes of labour migration just with the involvement of one state. It definitely needs the involvement of different States into the process of creation of effective labour migration schemes. There is a need for the involvement of sending countries, receiving country in the recent time role of transiting countries is growing more and work in this context. I also would like to mention in the context of labour migration, the importance of the international instruments. I will briefly come back to the Migrant Workers Convention. Well, co-operation in these areas, for instance, if more States would join this Convention, this will provide good ground for co-operation because what is an international convention, this is in practice of treaty between the States and in this case both sending and receiving States would have a ground for co-operation, a well-established document that specifies the rights in publication of each contractual party in the process of management of labour migration. And additionally as I mention that, the Convention was an extensive and has all necessary provisions and stipulations that can regulate process of labour migrations. For instances, I didn't mention that in my previous presentation but now I can say that the Migrant Workers Convention has some new rights that are attached to the regular migrant workers among them we can mention also the right of adequate living conditions of the right of regular migrants to home or to join existing trade unions. So from that respective the international co-operation in the area of joining and following the provisions of international instruments is quite important.

Also another important issue is data sharing and data collection. I mean all the governments that deal with effective mechanisms for migration management do need the data, and it is hardly possible to process of one country to collect all actual and all objective data that would reflect the migration processes. So, in this area it is obviously the co-operation of different countries migration management is needed. Another important issue is that in the process of international co-operation the countries can jointly address the issues of concern I mean that belong to one or another region. So, that will save resources and that will save time and that will save human resources as well. If we will go further through the forms of international co-operation I would like to mention, before we consider the forms of international co-operation, one important thing, during the overview of the different types of the international co-operation, we will just have the overview of the ones that are directly dealing with the issue of the migration. But in addition we have all the regional initiatives, regional conferences, Organizations and initiatives that have in the focus of another subject, but still have migration processes in the agenda as well.

So, speaking about the forms of international co-operation I would like to switch on my power point presentations so that it will give also some visibility to the things I am going to say.

Thank you very much. So among the forms of international co-operations we can identify four main ones. First one is global co-operation, then inter-regional co-operation, regional co-operation and lastly, bilateral co-operation. If you have a look at a few important points, for instances global co-operation, what are the main forms and what is the main way to exercise or to enforce global co-operation. I would like to bring some examples from global co-operations. The one you can see on the slide is an example of global co-operation is a Berne initiative, which was launched in 2001, it is a State owned process that is focused on collection and distribution of best experiences and best practices in the area of migration management. And this is done of course through the co-operation between different States. One of the

good outcomes of this global process is a study on international legal norms and migration that was the publication, which was issued couple of years ago.

Then another important product of this initiative is international agenda for migration management. This document is always in many cases called by international Organizations and governments as a good recipe book where you can find a different so called recipes to cook the dish called 'effective migration management mechanism'. So this publication, this product provides examples and references to best practices and ways to deal effective migration management schemes and mechanisms.

Another form of international co-operation and global co-operation, and another initiative, which desire to be mention, is Geneva migration group. And in the frame work of these co-operation initiative, six key players in the area of migration, the United Nations Office for Drug and Crimes, United Nations High Commissioner for Refugees, International Organization for Migration, Office of High Commissioner for Human Rights, United Nations Conference on Trade and Development and International Labour Organization formed a Geneva migration group, in order to co-ordinate its activities addressing migration challenges. This group is also called and the purpose of this group is also to exchange information, and identify the critical issues and co-operation and work together in the process of addressing migration challenges and also agreement on common positions and responses to migration challenges.

Another example of global co-operation is Global Commission on International Migration. The global commission on international migration was launched by the UN Secretary-General and the number of governments there were that participated on December 9, 2003 in Geneva and it was comprised of 19 Commissioners, it is independent and was given a mandate to provide the frame work for the formulation of the coherent, comprehensive and global response to issues of international migration. I am now sure that, the report of the global

commission was launched in October last year and it contains the analysis of the migration processes and also have some recommendations for effective migration policies on national, regional and global levels.

Another example of global co-operation is the high level dialogue on migration and development. But for the time being it is not a process. This would be a kind of an action and this will be a two-day special segment of the next United Nations General Assembly which will be solely dedicated to discussion of international migration and development. And that is going to happen in September this year. Well this is the very important one because that was the first time the migration will be in the agenda of the UN General Assembly and then it also shows the importance of the issue of migration and this issue is becoming an important item of the agenda on a high political level. And hopefully, it will have its own implications and continuation on global level. If we come further and consider the inter-regional co-operation, one of the best examples of interregional co-operation could be mentioned inter-governmental consultations on asylum, refugee and migration policies (IGC). This process started in 1985 and there are number of countries from different regions that are involved to this process, you can see the names of these countries on the power point slide and main areas of co-operation is dialogue and co-operation on the issues of asylum, on the issues of data sharing and border control and the issues of adequate and updated country of origin information and temporary protection return is one of the main issues, family re-unification protection and labour migration. This is one of the inter-regional co-operation processes that can serve as good example of inter-regional co-operation.

One of the effective mechanisms of international co-operation in migration management is regional co-operation and namely the processes called are regional consultative processes. This is a co-operative mechanism that offers the participating State an opportunity to share experience with other States usually in the same geographic region and to engage in discussion and information sharing on issues, policies and programmes of

common interests including consideration of the benefits of common approaches. Regional Consultative Processes (RCPs) are attractive because they participate in the common interest and participation is in informal and non-binding. This is one of the good points to underline that the co-operation is informal and non-binding on the other hand it provides a lot of practical solutions, and lot of practical outcomes on working level and the level of dissemination information and dissemination of experience and it can bring something more than that and one of the good example that the regional consultative processes can become really advanced and effective process in creation of regional mechanisms for migration management is Puebla Process I can give an example, this process is not related to these region, Asian African region it is related to the Central America and Northern America region and it will work on the Organization/governments and countries of Central and Northern America and this process is quite advanced so that the governments members of this regional consultative process have joined regional programmes, for instance, on enforcement of implementation of Smuggling and Trafficking Protocols also on some project on data sharing and information campaigns on prevention of irregular migration and also these governments have joint global fund, that can support orderly and return with dignity and safe for irregular migration.

If we will speak about the regional consultative process of this region, I would like to briefly mention few of them that are relevant on this region. For example, one which is important, the inter-governmental Asia Pacific Consultations on refugees, displaced persons and migrants (APC) and we can see on the map the area of coverage of this regional consultative process. It is quite wide and the main focus is return and re-integration, refugee assistance, assistance to trafficking and victim's entry and border control asylum and irregular migration. It also focuses on capacity building in migration management especially in the area of refugee protection and displaced persons and migrants.

Another important regional consultative process that we can mention here and which is relevant to the region is Bali Ministerial Conference on Peoples Smuggling, Trafficking in Persons and Related Transnational Organized Crime. So called Bali Conference Process I am sure many of you know about the processes, you come from this region and it mainly focuses on smuggling and trafficking in persons and related transnational organized crime as mentioned in the title of the regional consultative process.

The Colombo process that also involved the countries of Asian region and mainly focuses on labour migration issues and co-operation between countries on building effective mechanisms for labour migration management. We spoke about regional consultative process in Asian region but I would like also to mention some of them in African region and one of the biggest and most important one in African region is MIDSA process the Migration Dialogue for South Africa. It includes South African countries and it started in 2000 and it has for instances the current priorities like migration and border management, also it has the process of regional ministerial consultations on migrations, the topic of regular migration, smuggling and trafficking are one of the key issues for discussions on this and in the frame work of this process also there are number of regional and ministerial meetings going on. The process which is conducted and which is going on in another part of Africa which is also quite close to the mention, MIDSA process is MIDWA process. This is a Migration Dialogue for West Africa, and it started in 2001 and as you can see the majority of countries that part of the process are ECOWAS countries of course one of the topics for discussion is harmonization of legislation and migration policy, data management and data collection, and labour migration, irregular migration and joining efforts in this domain. In brief, these are the processes the regional consultative processes, that take place in the region of Asia and Africa. And I would like to stress the importance of the regional consultative processes despite the fact that they sometimes have non-binding and consultative character, they play an important role in finding common solution to common migration challenges and

they served as good basis for co-operation and joining efforts in combating negative aspects of migration and benefiting from the positive sides of migration and that help the States in co-operation on these issues. With these, I think I will stop on regional co-operation and stop my presentation and then we can probably start with the discussion. Thank you very much.

Vice-President: Excellencies, following the two presentations we now have fifteen minutes for comments, observations and questions where necessary.

We would like that the Member States that are going to make contributions, please list themselves so that we can call them in serial order/serial number. The floor is open to each one of us. Delegate from Kuwait Please.

The Delegate of Kuwait:¹⁹ Thank you, Mr. Chairman. Mr. President, this subject matter is dealing with the suffering of some weak minorities, when we say weak minorities we mean the children in particular and women as well as uneducated migrants. There are two kinds and types of migration, voluntary migration, those are the people who want to seek the better life and then there is a coercive migration which renders, or takes us to trafficking in women and children and takes us to crimes being perpetrated under this heading. There is no doubt that the AALCO Member States do give much attention to this issue. There is a relationship between Member Countries, between the south and south and the relationship between countries is to host this migrant worker and other countries which are exported to this migrant workers they are there in Asia and Africa as well, and there is also another relationship among countries with north and south countries and of course this is a relationship which can be described as co-operation between Member States in AALCO. Issues being raised in this connection is that we always notice that they have been confined within the framework of

Human Rights and respect of the Human Rights of those migrant workers and with people because this respect has been provided for in many Conventions because many of the Member States are parties to these Conventions, and agreements may not be all over them but most of these conventions and agreements are done into force and they deal with the illegal migration of workers discrimination against women, children, and child labour and many other conventions dealing with these matters and topics. The issue which needs real co-operation and constitutes real problem is the co-operation between the recipient countries and exporting countries with these migrant workers. It should be a mutual process and process of co-operation. When we took about this matter we do not have in our hand a certain document or instrument by which would be dealing with and discussing it and trying to solve problems incorporated in it, but within this framework we can make some proposals and recommendations, we should come up in Session on this very subject in order to improve the situation of those migrants.

There is a very delicate matter which is sensitizing awareness, this is a very important matter to alleviate and to apply to people and this is the commitment between the recipient countries and exporting countries, many of the migrants go to other countries and we do not have the least knowledge of the rules of these countries and how we should be expecting these laws. There are certain mutual respect for these laws, that is why I wish if there would be a sort of recommendation coming out from this august Organization, that is AALCO, that it should urge the Embassies to provide the migrant workers with adequate information on the countries to which they want to migrate. The last speaker did an excellent presentation related to international co-operation and has set forth a number of matters and they all pertain to this awareness and which we should be concentrating and there should be co-ordination and for example like what was said about the Berne initiative about the Geneva migration document all these are information materials and I hope there should be this co-operation carried out between members of AALCO in this connection. That is why I wish if there would be continuous co-ordination and database

¹⁹ Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

which the countries would provide the migrant who would like to migrate necessary information they should be getting and that is very delicate matter related to the migration because some of the legal officers they just called themselves the legal officers which deal with migrant workers, but there are many crimes being perpetrated by these officers vis-à-vis the migrants. There should be a sort of co-ordination and the Member States are to deal with such matter. I hope there would be a sort of exchange of knowledge between Members of AALCO and having a database for those sectors that is the migrant workers and to have a sort of awareness and we actually should concentrate on role to be played by the Embassies of the Member States. Thank you.

Vice-President: We wonder whether we could comment on that.

Ms. Jillyane Redpath: Thank you for the comments. Which has raised a number of pertinent remarks or points. And indeed many migrant workers are often placed in very vulnerable situations; we often see women and children are those that suffer the most exploitative situation in the migration process. They themselves may not be uneducated but they are working in sectors that are often not regulated by the country which they are working. And indeed there is a need for greater international co-operation between the sending country and receiving country in the migration process. In order to ensure that the true benefits of migration are achieved by those individuals and respective countries, I would also pick up one point that you raised in relation to the fact that migrants we talk about migrant rights and its not just an issue of migrant rights, migrants have rights under international law but they also have obligation and they have an obligation to respect the law of the host country in which they are residing. And one excellent suggestion you have made is the greater provision of information, pre-departure information to the migrants in relation to those laws of the country into which they are migrating, those in the context of human rights, but also in the context of the obligations I think your suggestion for

greater co-operation amongst AALCO Members in this regard is really very pertinent comment and IOM would be happy to co-operate with the AALCO Secretariat in facilitating additional co-operation. I also thought that it was a very interesting idea you mentioned in relation to database on legislation and which is vital to the understanding of the law of the country into which the migrant is migrating. As I mentioned that starts and perhaps again is the opportunity for further co-operation between IOM and AALCO. IOM has set up such database or seeking to set up database on migration law and I think some way we could co-operate with the secretariat in preparing an instrument for AALCO Members that would perhaps be of use generally we have at this stage only collected, or only online at this is the international law and regional law, but we are having shortage of national law on to that database. So again I offer that there is a potential possibility of co-operation between IOM and AALCO. Thank you very much for your comments, because I think it is very honourable.

The Delegate of Somalia: Mr. Chairman I thank you very much for giving me the floor and I thank very much the speakers for their wonderful expressions of the situations of migrants. That the only thing I wanted to say is that Somalia is one of those exporters of migrants either refugee. Somalia generally is taken as a third world country. But, the speakers did not mention any report I read, I would like to first of all point out the root cause of this migration. And I know the laws are likely to blame us as to why we migrate to countries who has a value? You see Africa for example is known by history that it was the most exploited continent even after the war. It was the raw material that made the rich countries come up with all these works they have because Africa which was rich by its own during the earlier days, say, the Africa in 1884-86. It was a time of invasion of the Europeans into Africa had started and exploited taking all the goods that Africa would develop with its own resources.

So, now we only talk of the present day industries and commerce travel that migrants are causing. In gently, nicely you also speak about the laws created to respect these

migrants. This is very generous thing, simply because you also give me chance that I am also respected when I invade the country you know that is in search of life. But I am not doing any mistake, when I am migrating. I am only following what has been taken from us in the past just going behind that because you have, those who have become rich today have taken my goods in the past. They have taken my leather and they made shoes and sold to me and indebted me till I could not you know pay the debts. Of course, When I mean indebted to, I reserve to means of looking you know for living. So we go with a boat we sail on the sea. Yes, just now my brother made a statement that you should educate before they go that you cannot because you can't educate somebody who decide to leave the country migrate because he does not have time. Otherwise, he will be very comfortable to study have to go and learn how the laws are.

This is too much for the migrant or refugee whoever seeking the life in other countries. So, I would like you to first of all, to mention the root cause, you know even today in Africa 53 countries, we struggle for debt relief from the IMF and World Bank. See, we have been given debts that we can never pay. We have been put in a situation that only those who have possibility to pay the debt you know, that to the things that can ask for relieves while the masses has to venture. Therefore, I would love to not to just say that we are not a burden. I was traveling on a transit three years back; I was in the airport somewhere in a country, which colonized Somalia for about 70 years. At the airport I gave my passport and this person spoke their language to their colleague saying that look at them they came to our country they do this and do that things. And I understood and when she stamp the passport, I said you are an ill-mannered lady. You see, you have exploiting my country for seventy years, and you have been done all kinds of the things, when I came only one day to visit you are complaining? This is what is happening. It happened again, I was in the bus in my country where a lady from the third world asked a child to move from the chair and she put the child on her lap. The mother of the

child complained to the people who are in the bus. Look at this lady she takes my son from the seat, she come to my country she did everything, etc. Then I could not stand again, I have to say Madam, had you have been sitting in the chair for about 100 years, by force. But she just come today even she brought money today because she is not indebted so we would like to see not only the side that of the one who has been helped. I like to justify that these things doesn't come just for nothing. We are put in a position to do this. That is why we are calling public again on the idea of calling debt release, because it is my fault having taken the debt, we must should get much better off than that.

Therefore, I like you know the agency migration to first give us a reason why they have done that? Don't just put me to blame that you made the law to protect me. I am protected. I am looking for my own state. I am following what you are taken these guys took from my country in the past. Thank you.

Mr. Vassilly Yuzhanin: Thank you very much for your question with distinguished representative from Somalia I would like just probably, briefly try to reflect on the question and provide some answer if I will be able to. So, concerning the researches on root causes of migration both regular and most important irregular. Well, definitely there is a need to study such root causes. And there is a need to study this root causes on different levels and in different regions and in different approaches. And basically the international Organizations, governments so key players working in these sphere they do some steps and they do activities in these area. Well as an example of the research in the area of migration I can mention the research which has been done by IOM by our Organization, and it has been recently done in the last year 2005 and this is the global imported migrants. This is quite an extensive document which has several chapters that concern provide an overview of the general dynamics of the migration processes in the world, that provide the dynamics of the migration processes in the regions that provide the overview of the main reasons for migration and the main types of migration, that happen in various regions of the world.

And as I said quite an extensive document and this is one of the examples what is done on international level to study the migration processes and to find the root causes of migration both regular and irregular. Also I have to mention the reports of another key players apart from IOM in the area of migration and this is of course the ILO, World Bank, and United Nations Organization on Drug and Crime and all these are key players in its own area, there is also American Extensive Research and Service. Also, I have to mention the work of IOM and other Organizations in the region and on the national level. The research is also done on national level. I mean before I started working in IOM Geneva in IOM department, I was working for six years in the field in IOM on Kazakhstan. And well, for instance as a mission there we conducted several researches on various aspects of migration for instance, of irregular labour migration within the region, the causes of trafficking and smuggling within the region and through the region, the perspective of integration of migrants in various countries. So, I have to mention that some of the reports and lot of activities is done on this level and national level and I think that well be representations of IOM and other Organizations would be happy to share their reports and activities in to share which their findings together with the non-governmental Organization and governmental Organizations their partners in national level. And also there was a mention of the various problems that are met by regular and irregular migrants in the countries of destination. This is a very valuable comment and it's a very good comment I have to admit. And well there is a number of activities and initiatives that we are trying to do and address our programmes and activities on national level. For instance, I have to mention the information campaigns that was conducted by IOM at national level.

But they also provide activities and programmes on providing of assistance to migrants that are already present in the country of destination. These are also information campaigns on the rights and obligations of migrants that are present on the territory of the State, assistance for the

migrant workers both regular and irregular in protection of their rights, their systems in the integration, the work with the host communities, and information sharing with host communities, and various capacity building programmes. So, well I think I have to mention some work is done on the ground on this as well. So this is in brief what I can respond and you see some one would like to add, well you are most welcome. Thank you.

Vice-President: Can you please announce your country? Delegate from State of Qatar. OK. Qatar, Please.

The Delegate of Qatar:²⁰ In the name of God the Merciful, the Compassionate, we thank the speakers for their excellent expression they made today on migrant workers and immunities of the recipient countries and as well as State security. At the outset, I would like to thank lecturers very much for what he have said because it has brought a lot of information to the listeners. But, despite of all that, the expression had been the framework of the international migration law concerning to migrant workers. What pertains to the State security and State jurisdiction and sovereignty of these countries? According to domestic laws and cultural national security all these matters were quite ably dealt but they left, they did not touch upon matters related to, political and religious matters. We have a working paper which we will be presenting tomorrow, on folklore which is the culture of the people and State and the property of the people. And make a reservation on the mandate of the countries to deal, define what is good for their security and what is good for their folklore and heritage, all these are the rights of every country to adhere to its identity, its heritage and culture. There is for example in India, I should always respect the cow which is sacred, if I have meat I have to pay for what I am doing and I can be imprisoned, the same matter applies very much respect the value and traditions. Every country respectfully do have traditions and values, do you need migration of course migrant workers we do need and we should be co-operation between

²⁰ Statement delivered in Arabic. Unofficial transcription from the interpreter's version.

the sender countries and recipient countries, for these migrant workers and today's lectures on dealt with co-operation. It is very delicate matter when you talk of the domestic laws in a certain countries, this is very wide terminology and which has room for a lot of explanation because it's different from one place to another. That is why this lecture comes as a fruit in alleviating and accentuates here for the people, but we should co-operate, very much we should co-operate. We in Qatar, we do fully support efforts exerted about this Convention and we have no reservations made accept for what it pertains to the security matters. We in the gulf region and the Qatar is a very rich and small country. And we represent 15% from the population for those who are there in the gulf area, so the Migrant Workers Convention which we have one article of the Treaty deals with freedom of having workers unions, and Qatar is acceded to all these agreements, signatory to the human rights agreements, child rights and non-trafficking in women and children, it is signatory to all these agreements and in India, Egypt and Syria, and Iran and we have entered into bi-lateral agreement which are even stronger from the Conventions which you have mentioned in your lecture. Very briefly, we in the gulf countries and also the United Nations General Assembly adopted certain resolutions with the exception of the gulf countries on the freedom of having certain considerations that we have minorities, these worker migrants, but we do support the rights and we do need these migrant workers in our countries. We want this co-operation very much as you have mentioned. And I thank you.

Ms. Jillyane Redpath: I thank you for that. A brief comment as you read up to lunch. I think we covered your point that cultural issues also impact on interpretation of human rights. And domestic law does vary between different States and practices vary between different States. I would like to point out that international law doesn't vary, it says one thing and it is applicable to every one. There is however, a marginal appreciation in application of human rights on interpretation of human rights particularly in the context of limitation with

human rights. Human rights law does permit limitations in order to protect, for example, I can't find the exact word public safety, public moral or health. So there is some hope to identify countries is to some great extent anticipated in human rights for the need to protect that. Thank you.

Vice President: Now we will hear from the distinguished delegate from Iran. And then from there we will close and go for lunch and then come back. Delegate from Iran, Please.

The Delegate from Islamic Republic of Iran: Thank you Mr. Chairman. First of all allow me to begin with expression of my highest appreciation to the eminent panelists and very constructive information provided. As now we are in a legal Organization, allow me to raise the legal questions. Concerning the differentiations between the rights, for example, the fundamental rights which could be considered as *jus cogens*. Some rights regardless of any person whether migrant or not; regular or irregular, legitimate or illegitimate, they are entitled to enjoy these rights. Nonetheless, we see that in certain conflicts they don't try to deprive the people if they are migrants or not from their principle rights rather from their fundamental rights as *jus cogens*. And even if it is not at all a practice in certain countries it has been drawn to the national legislation and domestic regulations. And even further strengthening better to say further limiting these rights by trying to enter into the bilateral agreements between the countries in order to make fresher and enforce the so called sending countries for repatriation and we know that in certain cases even these practice on national legislation were subject to be put to the Supreme Court of two-three countries and later it was recognized that this national legislation was contrary to the constitutional law. Therefore, it seems that if the migrant could be left alone to defend their own rights and even fundamental rights they are not going to be protected sufficiently and efficiently. And therefore, it is a request if not the human obligation of the Organization such as yours, I want to have a juridic consultation department and division to offer them, to provide them with legal assistance, juridic consultation and even legal proceedings in such spirit of proceedings that some people deprived of the fundamental rights should go

even through the Supreme Court. And everybody knows how courts become defensive of the very rare fundamental rights of these people. Thank you.

Mr. Vassilly Yuzhanin: Thank you very much distinguished representative from Iran for the very valuable question and comment. Well, what I have to say, it's right, some time we face the problem that the basic and fundamental rights of migrants provided by international instruments, I have not observed. Well, in the real situation in our world, where we are it happens. And well definitely there should be measures taken by international community, by the governments, by international Organizations and non-governmental Organizations to provide as much as possible assistance to migrants and to make all possible to defend their rights. And well, one of the solutions, one of the ways to do it would be the active use of international enforcement mechanisms. For instance, the six core human rights instruments, they have enforcement mechanisms as I mentioned that the ICCPR and ICESCR. They have the enforcement mechanisms; I mean it is possible to use that. And that will lead some how to the improvement of the situation with migrants rights. Another thing, which you also very rightly mentioned the reason need to immediate, measures to migrants because well international instruments, international enforcement mechanisms they also take time. But what about migrants, particular migrants whose rights are violated, what we can do for him or her? And in that sense the role of governments is very important. The protection from the country of nationality is extremely important and councilor protection can be one of the ways in this domain can be one of the solution. It is also you mentioned there is a need probably I mean as you mention for our Organization to be active in this field and well we are doing certain steps in this domain as well. Of course, we depend on the projects that we have and policy that our Member States building, but well one of the steps is the creation of our department, international migration law department and also the activities within the field together with the governments and this international Organization. For instance, well one of the

example could be mentioned the legal assistance projects that would have in some of the countries on the national level where our Organization together with the non-governmental Organization, human rights Organizations, and associations of lawyers provide legal assistance and legal consultant to migrants, where the migrants could approach the NGO's or the office of IOM and get legal counseling on the situation. Sometimes in certain cases, the NGO's with the help of IOM and other international players have assistance in the courts or in the ministerial procedures to defend their rights. But I have to mention that, well this is the way how we can address as IOM because we do not have a mandate to protect the rights of migrants, but we can provide de facto protections by means of our activities and programmes we can provide assistance to migrants in on the national level in the particular situations.

Vice-President: Thank you for that reply. Now we welcome question and comments from distinguished representatives of India. And that will be our last delegate to speak on this matter.

The Delegate of India: Thank you Mr. President for giving us the floor at the last minute. And I will be very brief on my comments. Because it was rather I was tempted to make some observations on listening to the beautiful presentations made by the Representatives from the IOM, Geneva. And in our view that the very concept of International Migration Law that what proposed by Jullian Redpath that is not agreeable to us that for a reason that we understand that the provisions which we are talking as IML or basically the collection of various provisions traced from different instruments which are meant for addressing specific situations, for example, the right to seek asylum in case of refugee law or the protection of the civilians in case of forced displacement, it is a part of IHL. Why I am taking these two examples is that it will clearly mention for a purpose and it address specific situation. Situation in the sense that assuming that there exist a right to seek asylum for refugees. Can we justify ourselves that the migrants would also have the right to seek asylum in a border country? Not conceding to the fact that there exist such rights. But

migrants are different here. The second aspect is that the law of migration when we talk about that is a root cause what our distinguished representative from Somalia said in his intervention, we partly agree with him because the root cause of Migrant is different. I will tell you how it is? The migration may be due to for the economic betterment; migration may be by compulsion like marriage, adoption and divorce or you can say migration due to persecution. These things are different. We can not put all these things under single umbrella agreement kind of thing international migratory law or you can say the Law of Migration. Because these three are different, suppose if you take with the trade law, we have a difference of movement of factor productions and movement of non-factor productions. There comes the movement of labour, that labour again divided into Skilled, Semi-Skilled, and Un-Skilled. Where is the freedom of movement there? That what in your core presentation in the very first sentence said freedom of movement in the case of migration. Then third observation what we personally our delegation believes that the law of migration is different from law that protect the rights of migrants. These two things are should not be confused. In international community may develop international law or a code of conduct for migration, but when comes to the protection of the rights of the migrant. We believe that it is the State that should take care of the migrants who are there in its territory. Like you can say the example customary law recognizes the rights of protection of aliens. So here my concern is that how to distinguish and differentiate the migrants from other types of like refugees and then so on. I don't want to much waste the time and I wanted to focus on these issues and brought to the attention of the representatives from the IOM to address in a succinct manner so that we will be in a position to understand what exactly you want from us. Thank you very much.

Vice-President: Thank you for the comment. Can we hear response to that?

Ms. Jillyane Redpath: Thank you for your statements. Of course I have to answer, I

guess obviously I do not agree with you but I respectfully and I think what I would like to clarify is that IOM is not saying that all people who move are migrants. There is a distinction between forced migration and voluntary migration. We absolutely acknowledge that we are not saying refugees are migrants. What we are saying is that there is a law that exists admittedly emerging body of law or unrecognized fully body of law that deals with the migration process. So in migration *per se* can be forced and can be voluntary. So we are not saying every one moves migrants you know seeking to subsume refugees into the category of migration. Well we are describing or underlying is the law applicable to the whole migration process. I think that tasks might be clarified. A specific example you gave for example people from non-combatants who are forced to move in armed conflict and that refugees seeking asylum of course there are discrete categories of law however we believe they still apply to the migration process, which is called international migration law. I would also point out that this concept of international migration law is not a concept created by IOM. This has been the norms of international migration law for many decades. So, what we are seeking to do is not to create a new branch of law rather to prove together the norms that exist that have been recognized as applying to migration, but I will be very clear that we are not seeking to aside for example the refugees are migrants. What we do say the refugee law is part of the broader branch of international migration law, the law applying to migration. Thanking you for your comment. And it is not the first time we have heard that, we do believe that we are not creating any branch of law. We just clarifying that the body exists.

Vice-President: Excellencies, Ladies and Gentlemen, that makes end of our discussion on International Migration Law and the IOM. And now I return the floor to the Secretary-General, Dr. Wafik for directions.

Secretary-General: Sorry for the delay for lunch, Excellencies, but it seems that our panelist gave us excellent informations and dialogue between the audience and the panelists very fruitful. I would like on behalf all of you thank to the panelist who came all the way from Geneva and gave us an excellent

exposure and also I would like to extend my very deep appreciation to Excellency, Mr. Brunson McKinley, the Director General of the International Organization for Migration and the gratitude of the all the participants here also. Now we came to the end of the three half days special meetings, we will have a quick lunch and if we have time and since we are very much behind the schedule we will try to start the International Law Commission item just for one hour before we go to the site. So, I think if we gather here all at 3.00 sharp please we had almost one hour and fifteen minutes to have a quick lunch, and we can 3.00 – 4.15 maximum. A debate on the International Law Commission we will have the introduction of the item plus we will have the report of the chairman of the International Law Commission. That's all. Then we will start the deliberations tomorrow morning. So, at least we can save this one hour from tomorrows schedule. Now I have received, that is why I am telling you, I am received a very important communication from the Ministry of External Affairs that His Excellency, the Minister of State for External Affairs, Mr. Anand Sharma will reach the site at exactly 4.45. And he will be obliged and compelled to leave us at 5.15, he has a very important meeting and therefore, we all have to be there by maximum 4.30. For those who have transportation I will be very happy to see them going in their own cars, if not those who don't have transportation the site is very close, only three, four minutes drive from here, for those who don't have transportation, the AALCO have provided three buses of 35 seats each so which is around hundred and something and the rest is they can have their own Embassies car or whatever we will be glad to be there all and seated at 4.30. Car will be ready for 3.30 to 3.45, but as soon as we finish this ILC Session we will just go with our cars may be even if it reaches little earlier it will give us chance to have a look around before the Excellency, the Minister arrives. So, please 3'o clock sharp we meet here and 4.00-4.10 we leave to the site. Thank you very much.

The meeting was thereafter adjourned.