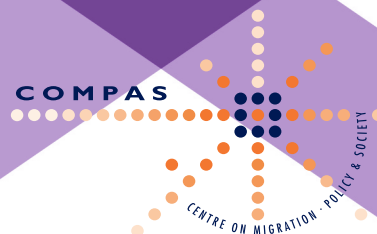# Global Exchange
on Migration & Diversity

Autumn Academy 2017

Strategic Approaches to Migrants with Irregular Status in Europe

St Hugh's College, Oxford
18 - 22 September 2017

Final Report

COMPAS

UNIVERSITY OF OXFORD

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Strategic Approaches on Migrants with Irregular Status in Europe

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The Autumn Academy is a symposium held in Oxford once a year for senior public officials, NGO leaders, academic experts and foundations from across Europe. The Autumn Academy 2017 on Strategic Approaches on Migrants with Irregular Status in Europe provided a unique opportunity for those responsible for developing and implementing policies towards migrants with irregular status at the international, EU, national or city level to share their knowledge, expertise and ideas; to consider the implications of the latest research evidence and analysis; to learn from those addressing similar challenges in other parts of the world and to critique policy and practice options.

Taking account of the evolving international and European legal and policy frameworks, and in light of the refugee crisis, participants explored the policy challenges posed by irregular migration over an intense week of discussions and learnt from differing approaches in Europe and in the United States. The presentations addressed different angles of policies on irregular migration – including in relation to enforcement, social policies and access to justice.

Given the high value of the presentations and discussions, this report was created to summarise key points noted from presentations and, without attribution, from the discussions. The final session drew together some of the themes and learnings that emerged and was also summarised separately in a document available here. Links throughout the report provide access to the presentations provided in Oxford and to video interviews with the participants.

Symposium participants at St Hugh's College, 2017

Contents

What did we learn?

The symposium was a rare opportunity for those of us working on irregular migration in different capacities, from the international to the local level, to share expertise and ideas. From four long days of discussion, there will for each participant be different ideas that strike a strong chord. For us there were five particular insights which were reinforced throughout the week.

1.   **There are conflicting interests and priorities within states, and between states and regional and municipal authorities** in relation to managing irregular migration which are scarcely being acknowledged or addressed. While national policies focus near exclusively on enforcement, it was clear that there is a strong public interest in policy also reflecting a significant range of competing social policy priorities – not least public health, public safety, tackling domestic violence and child protection. While the need to account for those priorities has been recognised at the margins of national policy reform, there is little public acknowledgement by governments of their need to do so. Nor are the relevant Ministries usually given a place at the table when migration management policies are set. As a result, exclusion of irregular migrants from basic public services is the norm. It is the regional and municipal tiers of government that then feel the consequences of exclusion most directly. In the absence of recognition of the challenges they face this is increasingly leading them to diverge from national policies to find creative ways to facilitate greater access to services. National governments surely need to acknowledge the range of policy objectives that also have to be met. They should be transparent on the extent to which they have already done so (in allowing access to a level of health care for instance, and for children to attend school); and should support municipal initiatives as part of a comprehensive approach rather than see them as in some way undermining their enforcement agenda.

> **There are conflicting interests and priorities within states, and between states and regional and municipal authorities' in relation to managing irregular migration**

2.   **The contradictions in current policies towards irregular migrants are unsustainable**, but there are some indications that this is at last being recognised. The numbers of those with irregular status will grow as many of the recent refugee arrivals in Europe are refused asylum but remain. Detention and removals are expensive; the level of returns is just 36% and, where reintegration is not viable, people return to Europe. The hostile environment of exclusion from public services (and even from having a bank account or a driving license), which is intended to deter, cannot be sufficiently hostile relative to conditions in source countries to induce many to return. Yet it has a range of unintended, negative social impacts: migrants who cannot report information on crimes for fear of being detained; exploitation tolerated for fear of being exposed; unaccompanied children who, on the day they turn 18, transform from a child entitled to protection to an unwanted adult with no right to stay. A focus on errant migrants, moreover, ignores the structural role which irregularity can serve in the labour market, or ways in which the design of legal channels

> **The contradictions in current policies towards irregular migrants are unsustainable, but there are some indications that this is at last being recognised**

can foster lapses into irregularity. It addresses a symptom not the drivers of irregularity that need to be addressed.

There is cause for encouragement, however, in the growing international and national recognition that a new approach is needed, not least in the forthcoming Global Compact. The letter to the symposium from the UN Special Representative on International Migration, Louise Arbour, welcoming our focus on irregular migration, wrote that '*the success or failure of the compact will rest in large part on the degree to which it can present a practical way forward in better managing this aspect of the broader migration picture*.' The Council of Europe has also entered the debate, through its European Commission on Racism and Intolerance (ECRI), providing guidance on provision of a data firewall between public services and law enforcement so that irregular migrants can access basic services without fear of enforcement action. National reforms, as in the access to health care now provided in Sweden and broader measures in Portugal and Italy, demonstrate a direction of travel which (as we also learnt from the United States) has not undermined enforcement nor normalised irregularity but has found a necessary balance between enforcement measures and avoiding the negative social consequences they can incur.

3.   **The current narrative on 'illegal' immigration is counterproductive for a constructive policy dialogue.** The prevalent negative terminology, however, demonises the individuals concerned, masking a nuanced understanding of the continuum among irregular migrants from minor rule breakers to those who pose a genuine risk. Government enforcement priorities do in practice recognise a hierarchy of harm, but the rhetoric does not. Actors at the local level can play a central role in changing the narrative, but most imperative is leadership from the top. Only government has the capacity to lead a more nuanced understanding and, in so doing, it would open up the political space it needs if it is to take forward a more balanced policy agenda. In that task we saw that it will need more than facts to shift negative perceptions; but better data and evidence is nevertheless needed if the argument is not to be ceded to those who want to ignore facts and stoke fears. Advocates who are themselves seeking to change the narrative have to recognise that human rights arguments have moral and some legal authority but, like

The current narrative on 'illegal' immigration is counterproductive for a constructive policy dialogue

facts, are not enough. The starting point for an effective narrative is understanding the basis of public concerns and addressing them. If there is a fear that migration is out of control, emphasising migrants' rights alone will not hit home. In our trans-Atlantic dialogue it was also striking how absent from European debates are irregular migrants themselves, and hence our understanding of who they are and the decisions they take, in contrast to the visibility of the Dreamers in the United States. How do we enable Europe's irregular migrants to be visible and their voices to be heard, without their risking the consequences in enforcement action?

Policy reform now needs engagement from all tiers of government and departments across government

4.   **Policy reform now needs engagement from all tiers of government, and departments across government,** respecting their differing but overlapping mandates, so that competing agendas can be reconciled. For a balanced agenda, management of irregularity needs to be mainstreamed across Ministries and municipal departments, not treated as a matter of enforcement alone. We found Portugal's experience in this respect

instructive. If national governments acknowledge municipalities as playing a legitimate role in a comprehensive approach, municipalities will in turn see national governments not as part of the problem but as partners in implementing a shared solution.

5.   **Progress can take place on many fronts across multiple agendas.** It is not within migration policy agendas that progress to address the balance between enforcement and social policy objectives is only, or even most likely, to be found. Those working on health, education or crime agendas are able to secure change without framing the debate as a migration issue, as the Swedish experience of health reforms and the Dutch experience on victims of crime demonstrated. Voices can be mobilised on that basis, we heard, who would not feel comfortable articulating arguments on migration per se. It was also striking how municipal approaches have been developed from a pragmatic need to address a problem, that need

Progress can take place on many fronts across multiple agendas

securing political support rather than having its origin in debate at the political level. Utrecht's need to resolve the immigration status of its homeless population, leading to provision of shelter combined with access to legal advice, was a salutary case in point.

The immense value of spaces for learning exchange

A further insight, should it be needed, was the immense value of spaces for learning-exchange across continents and professions, tiers of government and public and private sectors. Bringing together individuals with differing, complementary expertise on an issue – policy makers, practitioners, scholars, civil society and funders – who would not normally have an opportunity to learn from each other nor to stand back, reflect, and engage in an open ended but evidence-based debate, generates a new energy for reform not only fresh ideas - a momentum which we hope will now, in differing forms, have an impact on addressing the many challenges we discussed.

Dr Sarah Spencer
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UNITED NATIONS   NATIONS UNIES

LETTER FROM SRSG LOUISE ARBOUR TO PARTICIPANTS AT THE OXFORD UNIVERSITY 'AUTUMN ACADEMY' SYMPOSIUM ON

'STRATEGIC APPROACHES ON MIGRANTS WITH IRREGULAR STATUS IN EUROPE'

ORGANISED BY THE GLOBAL EXCHANGE ON MIGRATION AND DIVERSITY

ST. HUGH'S COLLEGE, OXFORD; 18-22 SEPTEMBER 2017

Dear Dr. Spencer, colleagues, friends,

I very much regret not being able to join you for this important symposium: its subject matter, timing and caliber of participants render your gathering urgent in every way.

Last year, as many of you will know, the member states of the United Nations committed to work towards a 'global compact for safe, orderly and regular migration' that they would adopt in 2018. The target date is exactly a year away, next September. While the precise structure and content of the compact remains unclear what we would do know is that states have committed, in it, 'to lay out a range of principles, commitments and understandings regarding international migration in all its dimensions, make an important contribution to global governance and enhance coordination on international migration, present a framework for comprehensive international cooperation on migrants and human mobility, deal with all aspects of international migration, including the humanitarian, developmental, human rights-related and other aspects of migration, and be guided by the 2030 Agenda for Sustainable Development'.

In leading up to this, an intricate patchwork of consultations has been established through a series of thematic and regional discussions.

This ambition to produce a compact is important for two interlinked reasons. It is a global expression of need and concern to put in place an effective means of managing migration, one which transcends any one particular region. And in so being it represents a very real opportunity for the international community to maximize migration's overwhelmingly positive contributions to the collective story of humanity, recognizing also the risks involved in failing to do so.

Your focus on irregular migration is particularly welcome. The success or failure of the compact will rest in large part on the degree to which it can present a practical way forward in better managing this aspect of the broader migration picture which, in many ways, is emblematic of two of the core issues which the compact will need to address. First, to the extent irregular migration represents challenges to the state, it highlights the need for the compact to emphasise interstate cooperation in its management. Migration, almost by definition, shines a spotlight on the inability of any one state – even region – to manage it effectively. And, secondly, to the extent irregular migrants are vulnerable to a wide range of threats, their status renders stark the imperative need to make sure the global compact affords greater protection to those in need. This imperative, I should add, has both a moral dimension, an economic rationale, and – in the sense of demanding policy-makers grapple more effectively with those drivers of migration which are undesirable – a preventive logic.

A key element of the global compact consultations is that we are actively seeking the broadest array of views from all relevant quarters. I am thus very keen to hear the outcome of your deliberations and I would encourage you to feed them into the final thematic session of the global compact consultations – as it happens on irregular migration and regular pathways – which will be held at the UN in Geneva on 12-13 October. For my part, I would be particularly interested in hearing your views on a number of issues which I believe need to be addressed if we are to be successful in this endeavour. Among them, I would emphasise language, and narrative.

Language: Much of the debate around migration remains polarized. This is not helped by loose use of language, not always unintentionally so. References to 'illegal' or 'economic' migrants, to countries of origin or destination (with no contextual qualifier), or to smuggling and trafficking as effectively interchangeable actions risk confusing the policy-making process; worse still, they risk in certain circumstances impugning broad swathes of individuals. Effective migration policies cannot be blind to the range of reasons for which people move and the shades of voluntariness or not behind their choices to cross borders. Further, effective policy-making should not invert cause and effect: 'smuggler-driven migration' being perhaps the latest example. The global compact, I would suggest, and the process leading up to it, needs to contribute to a keener understanding of the power of language in influencing this issue (as with many others).

Narrative: This is linked to language but goes further. Migration has been a largely stable phenomenon in human history and has played a remarkably positive role – economically and socially – on migrants themselves, on their communities of origin and on those in which they settle. Yet, the prevailing popular narrative is too often one of hostility and exaggeration towards migrants – as economic burdens, as security threats, or as a numerically overwhelming presence. Europe has not been immune to these tendencies, notwithstanding the particularities of and turbulence caused by current migratory patterns to the continent. In such a climate, it can be difficult to build policies grounded in fact. It puts pressure on short-term solutions, hindering more effective, long-term planning; and it does little to counter very real challenges presented by rising intolerance. It also clouds ability to discuss and think through very real policy challenges whether concerning labour needs, informal economies, and demographic trends; better understanding the link between development and migration; anticipating and managing large flows of vulnerable people; or grappling with the realities of integration and reintegration.

These are big issues, reflective of the size of challenge we collectively face. I look forward to hearing about your reflections on these and those other concerns you will no doubt raise in the coming days. At the very least, I call on you to contribute your clarity of thought and above all candour to the debate in this very important run-up to next year's negotiations on what the precise shape will be for the global compact on migration. And I hope, too, that I can join you in future rounds of discussions of this very important group.

With my best wishes,

Louise Arbouor
5 September 2017

List of speakers and participants

Bridget Anderson	Professor of Migration, Mobilities and Citizenship, School of Sociology, Politics and International Studies (SPAIS), University of Bristol, **UK**
Henry Ascher	Professor in Public Health, Dept. of Public Health and Community Medicine, Sahlgrenska Academy at University of Gothenburg, **Sweden**
Jan Braat	Senior Policy Advisor, Migration and Integration, Municipality of Utrecht, **the Netherlands**
Tanya Broder	Senior Attorney, National Immigration Law Centre, **USA**
Gabriele de Giorgi	Chief of political staff to the Prime Minister, **Italy**
Nicola Delvino	Senior Researcher, Centre on Migration, Policy and Society, (COMPAS) University of Oxford, **UK**
Godfried Engbersen	Professor of Sociology, Erasmus University Rotterdam/Dutch Scientific Council for Government Policy, **the Netherlands**
Annika Forsander	Head of the Centre of Expertise on Immigrant Integration, Finnish Ministry of Employment and the Economy, **Finland**
Jyothi Kanics	Research Fellow, Faculty of Law, University of Lucerne, **Switzerland**
Michael Keith	Director, Centre on Migration Policy and Society (COMPAS), University of Oxford, **UK**
Stephen Kershaw	Director of Strategy, Transformation and Partnerships, Home Office, Immigration Enforcement, **UK**
Avila Kilmurray	Consultant on Migration Learning Exchange, Social Change Initiative (SCI), **UK**
Morten Kjaerum	Director, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, **Sweden**
Michele Klein Solomon	Director, Global Compact for Migration, Office of the Director General, International Organization for Migration, **USA**
Axel Kreienbrink	Head of research department, Federal Office for Migration and Refugees, **Germany**
Michele LeVoy	Director, Platform for International Cooperation on Undocumented Migrants (PICUM), **Brussels**
Ben Lewis	Consulting expert, Former Advocacy Coordinator / Representative for the International Detention Coalition (IDC), **Geneva**
Rosa Logar	First Vice-President, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), **Austria**
Andrea Menapace	Executive director, Italian Coalition for Civil Liberties and Rights (CILD), **Italy**
Simon Mordue	Deputy Director- General for Migration, Directorate-General Migration and Home Affairs, **European Commission**
Bitta Mostofi	Assistant Commissioner, Mayor's Office of Immigrant Affairs, New York, **USA**
Pia Oberoi	Advisor on Migration and Human Rights, UN Office of the High Commissioner for Human Rights (OHCHR), **United Nations**

Colm O'Cinneide	Professor of Law, University College London, **UK**
Roumyana Petrova-Benedict	Senior Migration Health advisor, Head of MHD, Regional Office for the EU/EEA International Organisation for Migration (IOM), **Brussels**
Fizza Qureshi	Director, Migrants Rights Network, **UK**
Catarina Reis Oliveira	Director, Observatory for Migration, High Commission for Migration, **Portugal**
Rebecca Rittgers	Consultant, Social Change Initiative, **UK**
José Ruiz de Casas	Deputy Director General for Justice and Home Affairs, Ministry of Foreign Affairs and Cooperation, **Spain**
Ramon Sanahuja Vélez	Director, Migrant Care and Hosting Department, Barcelona City Council, **Spain**
Frank Sharry	Executive Director, America's Voice, **USA**
Tone Skodvin	Chief Adviser, Department of Business and Public Ownership, City of Oslo, **Norway**
Sarah Spencer	Director, Global Exchange on Migration and Diversity (GEM), Centre on Migration Policy and Society (COMPAS), University of Oxford, **UK**
Stephanos Stavros	Head of the Office of the Secretary General's Special Representative on Migration and Refugees, **Council of Europe**
Alexander Sutton	Senior Grants Manager, Paul Hamlyn Foundation, **UK**
Patrick Taran	President, Global Migration Policy Associates, **Switzerland** (Former Senior Migration Specialist, International Labour Organization (ILO))
Paula Tiittala	Medical specialist, Refugee health, National Institute for Health and Welfare, **Finland**
Anna Triandafyllidou	Robert Schuman Chair, Global Governance Programme, European University Institute, **Italy**
Margaret Tuite	Coordinator for the Rights of the Child, DG Justice, **European Commission**
Peter Webinger	Deputy Director-General, Legal Affairs and head of the Directorate for Migration, Citizenship Affairs, Asylum and Human Rights, Ministry of the Interior, **Austria**
Michael Zwart	Police inspector, Amsterdam Police, **the Netherlands**

Irregular migrants in the UN Global Compact

Michele Klein Solomon, Director, Global Compact for Migration, Office of the Director General, International Organization for Migration, USA

Watch the interview with Michele Klein Solomon [here](.).

The presentation focused on framing irregular migration within the international context of the United Nations (UN) and on how the development by Member States at UN level of a Global Compact for Safe, Orderly and Regular Migration (GC) will address the issue of irregular migration.

The decision of the United Nations General Assembly (UNGA) to develop a Global Compact for migration (and one on refugees) was adopted exactly one year before the Symposium, with the New York Declaration for Refugees and Migrants,[1] following the unprecedented flows of refugees and migrants who reached Europe in 2015. The arrival of almost two million people in a very short period of time – with great loss of lives and significant impacts for European countries – was unprecedented, but could have been foreseen, as Syrian refugees had been displaced throughout the Middle East with no real access to work or education for several years. It was foreseeable that they would look for new opportunities elsewhere, as it was foreseeable that once Syrians found their way to Europe, the same informal migration channels would be used by others, including people escaping precarious living conditions in Asia or West-Africa. The international community realised that global cooperation was needed to deal with large movements of migrants and refugees. Following the impetus of the UN 2030 Agenda for Sustainable Development, the New York Declaration marked a new era of unprecedented engagement on migration at UN level.

The main idea behind the GC is to create an international framework for cooperation to enhance migration governance and guide national governments, while leaving them the discretion of deciding which non-national can access their territories. The challenge is to reconcile these two dimensions and ensure that national governments abide by the compact without imposing rules on access to national territories. The GC will address migration as a positive phenomenon that can bring advantages to both migrants and their countries of destination as well as of origin. It will reiterate the human rights of all migrants, irrespective of immigration status.

The speaker explained how irregular migration is a central issue in the development of the GC. Several elements suggested for inclusion by the New York Declaration look directly at irregular migration and the rights of irregular migrants. While one thematic consultation is specifically focused on irregular migration and regular migration avenues (the sixth and last), the topic already featured in all the five previous discussions, showing how central the issue is for national governments. It was explained how the debate on 'the drivers of migration' particularly focused on drivers of irregular migration, as well as it featuring in the discussions on migration governance and

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[1] www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

international cooperation.

In the discussions, national governments had shown similar thinking on *e.g.* the need to reduce the drivers of forced (irregular) migration (by *e.g.* tackling poverty, creating more regular migration channels including family reunification, fighting smuggling and trafficking, reducing environmental degradation and climate change, and avoiding regular migrants falling into irregularity). However, irregular migration also fosters different positions, with major destination countries often focused on using the GC as an instrument to secure cooperation on the return of irregular migrants, while migrants' countries of origin want an extension of legal migration channels. The consultations also revealed discrepancies between treatment of these issues at the national and sub-state, local level, with many local authorities emphasizing the need for social inclusion and access to services for migrants regardless of migration status. While all governments agree on recognising the human rights of all migrants, the challenge of the last thematic consultation will be specifying what in practice these rights are for irregular migrants (particularly with regard to social rights, limits to detention, and the tensions between firewalls and enforcement stances) – issues that divide governments. Irregular migrants' criminalisation, detention and the narrative and language used to describe irregular migrants will also be crucial topics to address.

The presentation's conclusions emphasised that the negotiations of the GC offer a historic and unprecedented opportunity to enhance international cooperation on and governance of migration. While the GC does not aim to change the existing international legal framework, including international human rights, transnational organized crime and labour law, it will address how to translate that framework in practice, and enhance states' ability to manage migration in a more humane, comprehensive and cooperative manner. Success for the GC will depend on its inclusiveness: it is intended to be genuinely global, with no regional focus. The speaker finally restated the importance of developing migration governance horizontally, between states, but also vertically, including sub-state and local authorities, involving civil society, employers, unions and migrants themselves.

Discussion

The discussion focused on the difficulties of finding agreement on irregular migration in a fragmented global political context, where authorities at different levels of governance seem to adopt contrasting approaches towards migration:

- In just one year, the political landscape around the world deeply changed since the adoption of the New York Declaration, making the negotiations for a GC an even more challenging outcome. The work of the international community is going to be crucial to keep the momentum offered by the GC to reach agreement on issues related to irregular migration.
- There is a stark discrepancy between the position on irregular migration of national governments on one side – focused on enforcement – and that of supranational and sub-state local authorities on the other, which instead converge towards an approach to migration more focused on the rights of migrants.
- The national level is central on migration issues, but also the convergence of supranational and local authorities plays a key role in defining far-reaching agreements and international cooperation. The example of US states' international engagement on climate change is illustrative of the role that can be played by local authorities at global level. We need both a top-down and bottom-up approach to find agreement on sustainable solutions to the challenges posed by migration.

- National governments are guided by electoral logics, which too often focus on giving short-term responses to the anxieties of societies related to immigration. A lack of leadership by national politicians in recent years has exacerbated the quest for short-term solutions. The fears and expectations of public opinion, however, can and should be managed in a better way to find sustainable, long-term solutions and find far-reaching agreements on immigration.
- The local level – including local authorities, community organisations, schools and other local institutions – can play a key role in breaking the sense of fear towards migrants and in creating a public opinion that supports the supranational efforts of creating long-lasting solutions that respect the rights of all.
- Some issues related to irregular migrants are less divisive. These are basic issues, such as migrants' access to identification documentation (*e.g.* birth certificates), pre-departure orientation and practical issues that can be addressed through bilateral labour agreements, where there is a clear coming together of interests. That is where civil society and authorities at international, national and local level should come together and agree on. Migration cooperation amongst countries should be built up around those issues.
- Societies and migrants around the world need both long and short-term solutions. While agreement at international level can be found more easily on certain issues, the real challenge for the global community will be to find solutions to the long-lasting issues that drive irregular migration, such as poverty and conflicts. The GC should serve as the beginning of a long-lasting process towards the eradication of the drivers of forced migration.
- The GC will not be the end of international negotiations on migration cooperation, but the beginning of a new global movement that sees the international community coming together as a whole on migration issues. This is 'migration's real moment'. A previous comparable experience is the global movement on environmental protection which in the 1990s saw the international community coming together (with the Rio Declaration on Environment and Development). That was not the end of the discussions, but the beginning of a global effort to protect the environment.

The opening session with Michele Klein Solomon

Irregular Migrants and Rejected Asylum Seekers - Conceptual and Policy Challenges for Europe

Anna Triandafyllidou, Robert Schuman Chair, Global Governance Programme, European University Institute

Watch the interview with Anna Triandafyllidou here.
Download Anna Triandafyllidou's PowerPoint presentation here.

The presentation provided a comprehensive picture of irregular migration to and within Europe and challenged common misconceptions that often feature in media and political discourse on immigration.

Irregularity cannot be described as a unique or static condition, but rather as a continuum of different and fluid situations with different degrees of irregularity. The presentation explained how an irregular condition can derive from an unlawful entry, as often pictured by media and public opinion, but more often it depends on an unlawful stay beyond the limits of a permit ('administrative flows of irregular migration'). It is not possible to have precise figures on irregular migration to Europe, as this is by nature a hidden phenomenon. The last authoritative study on the number of irregular migrants in the EU dates back 10 years, yet the number of irregular migrants fluctuates constantly. Figures often used by media simply rely on data on enforcement, which is only one aspect of a more complex and vast reality. Only proxies can be used to estimate the number of irregular migrants in Europe, but there is a high risk of misrepresenting the phenomenon.

The presentation also addressed the links between irregular migration and irregular forms of work. Informal economies in Europe together with the demand for workers in low-skilled sectors of the economy constitute a major pull factor for irregular migrants, given that formal avenues for migration largely stay open only for high-skilled workers. Moreover, the increasing saturation of sectors requiring high-skilled workers also incentivises high-skilled migrant workers to look for jobs in the informal economy. Hosting societies have an interest in having irregular migrants working in certain sectors.

On irregular migrants' removal – a topic often misrepresented – it was explained how return is a challenging process (for both authorities and migrants) that often proves inefficient or not sustainable, contrary to what is commonly thought. The risk that removed migrants re-emigrate from their countries of origin is high, particularly for young migrants who are returned to countries where they were uprooted at a very young age. Human rights of people in return procedures must be protected, as per EU and national legislation, yet this constitutes a major challenge for returning irregular migrants, even in cases of voluntary return where the 'voluntary' aspect is only the result of a previous apprehension.

The presentation finally highlighted the contradictions between different interests involved in regulating irregular migration. Irregular migrants can have beneficial impacts on rural areas, yet the same benefits may not be observed in cities. Similarly, different sectors of the economy can have contrasting interests in irregular migrants' work. National interests are different from those of local

authorities and, accordingly, policies focusing on irregular migration at different levels of governance tend to overlap and contradict one another. The result is often that local authorities have to deal with the presence of irregular migrants without receiving funding from national or supranational authorities to do so.

Discussion

The discussion focused on the links between irregular immigration and the informal economy; the tensions between civil society and national governments; the polarisation of political discourse on immigration; the roles of municipalities, and the need for more political leadership to restore trust in immigration policies:

- Although the informal economy represents a pull-factor for irregular migration, national policies in Europe have not enhanced the fight against the irregular labour market. Instead, laws and policies to fight the informal economy in Europe have been weakened. Labour market enforcers feel disempowered: a contradiction within the enforcement system. An enhanced effort to fight labour exploitation and irregular labour is needed, yet political development on these issues seems difficult to achieve.
- The interests of hosting societies in having a cheap labour force fuels the discourse on the 'necessity of migrants'. While the positive impacts of migration on the economy should be acknowledged, speaking of migrants in economic terms has the risk of overshadowing the human dimension of migration and favour exploiters and the black market.
- Economic arguments in favour of more liberal immigration policies might not be effective in today's society. Irrespective of the positive impacts of migration on the economy of the hosting country, recent developments in countries like the United Kingdom or Switzerland show that hostile publics are willing to pay an economic price to enact stricter policies.
- States often rely on NGOs to manage the presence of irregular migrants, and their crucial role is evident. Yet, there is an increasing tension between governments and civil society. The European trend of criminalising NGOs for supporting irregular migrants mirrors a global trend that is increasingly worrying.
- There is a need to reconcile the tensions between governments and civil society and reduce the polarity of discourse on irregular migration. Both sides need to widen the debate: NGOs should acknowledge the risks and dangers for public security of uncontrolled migration ('not all irregular migrants are good'), while governments should recognise that enforcement alone is not always the right response ('not all irregular migrants are bad'). Similarly, all political parties should work to reduce the polarisation in their discourse.
- Political leadership is needed more than ever. European societies have lost the 'sense of control' on immigration and the lack of political leadership in Europe exacerbates society's fears. Restoring the 'sense of control' through political leadership is vital for well-managed immigration policies and the respect of human rights.
- The municipal level is increasingly surfacing as a key player in the inclusion of irregular migrants. Those working to protect human rights now look to municipalities to provide protection.
- Irregularities are also a fault of states. Governments are responsible for being unable to offer legal avenues for migration and for failing to regularise those migrants who should be given legal status, and avoiding regular migrants falling into irregularity. States can equally be seen as 'irregular' for failing to respect international law and human rights standards in their immigration policies.
- There are limits to what governments can do in the context of their electoral mandate: the

international human rights framework is there to ensure that the boundaries of their powers are respected.

Evolving International & European human rights frameworks related to migrants in irregular situations

Dr Pia Oberoi, Advisor on Migration and Human Rights at the UN Office of the High Commissioner for Human Rights

Watch the interview with Dr Pia Oberoi [here](#).
Download Dr Pia Oberoi's PowerPoint presentation [here](#).

The presentation discussed evolving frameworks – including international law and multilateral treaties – for protecting the human rights of all migrants at the European level, and offered ways forward.

The presentation began by reminding participants that the principle of non-discrimination enshrined in European law and international Human Rights standards is a leading principle in irregular migrants' protection. 'Everyone' and 'all' people are entitled to all of the rights set forth in the International Declaration of Human Rights and therefore distinctions between citizens and non-citizens should be exceptional and narrowly conceived. Treaty monitoring bodies have consistently recognised migrants as a vulnerable group and argued that the key elements of international human rights (universality, inalienability and indivisibility, and interdependence) must be extended to all migrants. Universality, at the same time, must be balanced with states' sovereign prerogatives on immigration. States are obliged to show that discrimination against migrants with irregular status must serve a legitimate objective and must not cause or perpetuate harm. The efforts to control migration and use strong enforcement measures – such as sharing data in schools and hospitals – can indeed have a negative impact on migrants, and more broadly the communities they live in. The speaker emphasised that irregular entry and stay constitute administrative matters; they are not crimes *per se* against persons, property or national security.

The speaker subsequently touched upon the most recent multilateral frameworks that address irregular migrants' human rights. The presentation *inter alia* introduced the Global Commission on International Migration's call on States to address the drivers of irregular movement and to provide regular migration opportunities (2005); and the joint statement (2010) of the Global Migration Group's Principals expressing deep concern about the human rights of irregular migrants as individuals who are more likely to face discrimination, exclusion, abuse and exploitation. The presentation also touched on the annual resolutions of the Human Rights Council on the 'Human Rights of migrants', notably the resolution on migrants in transit (2015), and migrants in the context of large movements (2016). Finally, the speaker presented the 2013 High-Level Dialogue Declaration on international migration and development, where States first recognised the need for international cooperation to address irregular migration in a holistic and comprehensive manner and ensure safe, orderly and regular migration, with full respect for human rights. This was followed by the New York Declaration, a more comprehensive statement, with over 100 explicit references to human rights, acknowledging the complex nature of irregular migration.

The speaker concluded with a brief presentation of the draft Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, led by the Office of the High Commissioner for Human Rights. The Principles and Guidelines aim to assist States and other relevant stakeholders to provide protection to all migrants who are in situations of vulnerability, and who are thus entitled to call on a heightened duty of care. It is an attempt to guide States on

how to operationalize the human rights framework, drawing on examples of promising practice from around the world.

Migrants with Irregular Status: Evolving International & European Human Rights Frameworks

Colm O'Cinneide, Professor of Constitutional and Human Rights Law, University College London and a member of the European Committee of Social Rights

Download Colm O'Cinneide's PowerPoint presentation here.

The presentation explained how the debate on the human rights of migrants, particularly of those with irregular immigration status, is framed as a dichotomy between protection and control, which leads to intense political and legal battles between protection-orientated and control-orientated actors. This dichotomy is reflected in the law and in legal proceedings, where decisions of a lower court, for instance on migrants' exploitation, are often overturned by higher courts.

In legal terms, human rights standards are applicable to all, but the situation of irregular migrants is complicated by the fact that an irregular migration status may affect the scope of states' obligations. It may indeed provide states with an objective justification for 'proportionate restrictions' on the enjoyment of migrants' rights, or limit the responsibilities of state parties vis-à-vis those rights. A 'grey zone' exists in the applicability of certain rights standards to irregular migrants – especially in relation to socio-economic and non-discrimination requirements. The legal situation is made unclear by the tensions between universal rights and justified restrictions. Such tensions are played out in case law. Yet, case law can swing because each case has its own unique factual basis and judges try to be sensitive to individual cases while balancing governments' concern for the control of migration.

The presentation finally focused on the jurisprudence of the European Committee on Social Rights (ECSR), which offers a clear example of the aforementioned tensions and dichotomy. The ECSR – the judicial body monitoring compliance with the European Social Charter – aims to maintain integrity of human rights standards and balance states' desire to control migration. On different occasions, it has agreed that States cannot be expected to allow access to all rights for irregular migrants, but that they should also be required to ensure a basic level of rights consistent with human dignity, including *e.g.* providing shelters for irregular migrants in certain conditions. Still the decisions of the ECSR concerning irregular migrants' rights received very controversial reactions, particularly from some national governments, testifying the complexity of the legal and political debate on irregular migrants' rights.

The speaker finally invited participants to reflect on what the future direction of travel for irregular migrants' rights could be. The legal minimum under the European Social Charter has been taken forward in other conventions and contexts, but will the concept of 'core minimum' be clarified? What will it include? What can different actors (state/civil society, national/supranational, Council of Europe/EU, Europe/UN, local/central, and among them those who are primarily 'protection'-orientated or 'control'-orientated) bring to the table in this regard?

Discussion

- Human Rights, by nature, require the most expansive interpretation possible of entitlements. However, it should be acknowledged that the quantity and quality of rights in the law are far beyond what people, whether migrants or not, enjoy in reality.

- The tensions between migrant rights advocates and people who oppose an expansion of rights are exacerbated by the fact that in real life even citizens cannot enjoy their rights at full extent. We risk a backlash and public alienation from human rights values. Advocates need to work for the enjoyment rights for all, not only for (irregular) migrants. When protecting minorities, the majority should not be disregarded.
- Human rights advocates should be aware of the risks of demanding the expansion of rights for irregular migrants. As showed by case law, a victory in court could also have the side effect of provoking controversial reactions by governments that further restrict rights. Ambitious laws may not prove good in practice. Should advocates demand less to protect more people?
- The importance of case law for authorities at different levels of governance was remarked on. Local authorities aiming to provide services for irregular migrants against national guidance have been enabled (*e.g.* in the Netherlands) to do so by the case law of international courts, like the ECSR. It was suggested that local authorities and civil society join forces to explore the possibility of initiating further legal proceedings in support of migrants' rights.
- Control and protection do not always contradict one another. Governments' efforts to crack down on employers/landlords of irregular migrants are also a way to ensure protection for migrants against exploitative jobs/rental conditions.
- Similarities between the debate in Europe and in the US were noted, particularly with regard to labour rights and the welfare state. At the same time, participants felt the need to expand the debate to include other countries beyond the Western World, and *e.g.* to look at the situation in Russia.
- Beyond legal terms, when talking about equality of rights, race should also be part of the debate. Race plays a role in making an issue relevant for courts: in the US the fight against drugs was seen as a criminal justice issue as long as it was considered a problem only for black communities. Once the problem involved also the white community, the issue started to be seen as a public health problem. Class and gender are also factors to consider.
- In the debate 'protection vs. control', the voices of those directly involved – migrants and other residents should be heard.
- Courts' decisions can play a political role. In the past (*e.g.* in the 80s' in the USA), important courts judgments on undocumented migrants were influenced by the political context of the time.

Afternoon Chair: **José Ruiz de Casas**, Deputy Director General for Justice and Home Affairs, Ministry of Foreign Affairs and Cooperation, Spain

Evolving EU legal and policy frameworks

Michele LeVoy, Director, Platform on International Cooperation on Undocumented Migrants (PICUM)

Watch the interview with Michele LeVoy here.

The presentation highlighted the development of EU policies on immigration starting from birth of an EU Area of Freedom, Security and Justice in 1999, when the Treaty of Amsterdam conferred competences on immigration on the

European Union. The presentation argued that immigration enforcement against irregular immigration has represented since then the founding element of EU immigration policies, and throughout the years EU policy developments have been almost exclusively based on an enforcement-focused approach. Certain pieces of legislation constituted milestones of this approach, including the 2002 Facilitation Directive and the 2008 Return Directive. Detention and removal of undocumented migrants represent fundamental elements of EU policy on irregular migration, as more recently restated by, for example, the 2017 State of the Union 'Juncker Proposals' on migration or the European Commission's Action Plan on Return, which calls on Member States to increase their efforts on return and detention operations. In the United Kingdom (UK) enforcement takes an even greater relevance, as EU limitations to enforcement (such as the 18-months' time limit for migrants' detention imposed by the Return Directive) do not apply.

The speaker then clarified that notwithstanding an enforcement focus, some instances of protection for irregular migrants exist in EU law. While limited these include Art. 14 of the Return Directive (providing core minimum standards for migrants including emergency health care and education for children, but only pending their removal); and the 2009 Employer Sanctions Directive (which *e.g.* allows complaints by undocumented workers against their employers through the intermediation of third actors/trade unions). These measures, however, are often not applied in practice because of a lack of firewalls to protect undocumented migrants from the risk of deportation when filing a complaint. In some countries in particular, labour inspectors are instead obliged to report irregular migrants to immigration authorities. Finally, the 2012 Victims of Crime Directive, aimed at providing protective measures for all victims of crime, also applies to victims with irregular migration status (Art. 1). The speaker also explained that more protective measures were included in EU law thanks to the activity of the European Parliament, which obtained co-decision powers in the production of EU legislative acts with the entry into force of the Lisbon Treaty. The Parliament showed a more human rights-based approach towards irregular migrants, and it is thanks to the intercession of the EU Parliament that the Victims Directive applies to victims with irregular immigration status.

The presentation also pointed to the paucity of regular channels for labour migration across skills levels in EU law, which contributes to increased flows of irregular migration. The 2014 Seasonal Workers Directive, which provides good standards for regular migration to the EU, is only being implemented by a limited number of Member States. Similarly, the proposed reform of the EU Asylum *acquis* towards more restrictive asylum legislation could provoke an increase in the number of irregular migrants and asylum seekers who are unsuccessful with their procedures.

Finally, Michele LeVoy argued that while policies promoted by the European Commission's Directorate directly responsible for immigration policies (DG Home) might generally tend towards a heavily enforcement oriented approach towards irregular migrants, new actors within the Commission responsible for other policies (*e.g.* on social or employment issues) might play a key role in the future to show a more inclusive approach in their policies, irrespective of immigration status. Moreover, policies of Member States that *do* grant access to services as well as justice are not well known but should inform debate at EU level.

The situation of children with irregular status

Margaret Tuite, European Commission Coordinator for the Rights of the Child, DG Justice

Watch the interview with Margaret Tuite here.
Download Margaret Tuite's PowerPoint presentation here.

The presentation focused on the importance of not disregarding the situation of children in the development of migration policies, and on the work done by the European Commission to ensure that the interests of migrant children are safeguarded in EU policies. This has been a continuous and progressive effort, starting from a situation where EU immigration and asylum policies did not take into specific consideration children as individual rights holders, but only as 'unaccompanied minors' or dependents of a family requesting asylum.

The increased attention of the European Commission towards children is testified by the 2016 reform proposals of the Common European Asylum System (CEAS), where several specific references to children are made, including restating that the primary interests of children shall be the primary concern in the implementation of the regulations on asylum, and promoting new more protective rules on children's guardianship. Similarly, the 2017 European Commission's recommendations on return give a primary consideration to the situation of migrant children and aim to avoid children with irregular immigration status being left in a legal limbo. Instead, they should be provided with either a return decision or a residence permit. The recommendations also address the issue of children's detention, a possibility that should not *a priori* excluded by Member States.

In 2017, the Commission adopted a specific Communication on the protection of *all* children in migration, covering all non-EU children, be they accompanied, separated or unaccompanied, and irrespective of migration status. The Communication set out urgent actions at EU level but also sought to propose durable solutions for the reception and protection of migrant children. In particular, the actions aim at ensuring protection of all children as soon as they reach the EU border with swift identification and registration procedure. It reminds states that children should be prioritised in border procedures and proposes measures to ensure Member States' better cooperation on missing children. It provides proposals on children's reception, and states that children need to have access to legal assistance, healthcare, psychosocial support and education without delay and regardless of their status.

Finally, the presentation indicated that beyond migration policies, other policy areas try to ensure the rights of migrant children, as for example the policies on structural funds that promote non-segregation of migrant children in school. Similarly, policies in the 'Social Pillar' aim at ending child poverty for all children (even though policies of this 'pillar' do not normally apply to irregularly-staying migrants).

Discussion

The discussion focused on the need for more legal avenues to access EU countries; access to

(social) rights for irregular migrants; the rights of children and young migrants.

- Legal avenues: the erosion of family reunification schemes for refugees and migrants should be recognised as one cause of the increase in irregular arrivals and stay
- The efficiency of residence permits for seasonal workers in offering an alternative legal avenue to irregular migration is disputed, as previous experiences in *e.g.* Switzerland or Southern Europe offer conflicting lessons. More legal avenues are needed to provide an alternative to irregular migration.
- While EU legislation is focused on enforcement, we should realise that national legislation in Europe does provide a certain level of access to social rights for irregular migrants. Notwithstanding a general perception of restrictiveness, the direction of travel of national policies and legislation is (with some exceptions) towards an extension of those rights. This is not always due to humanitarian reasons, but also factors such as ensuring public health or crime prevention. We should focus on how and to what extent that access is allowed. Where it is allowed, however, there can be concern that it will be abused or act as an incentive for irregular arrival or stay.
- Can detention of children be in their best interests? Can it be considered inhumane or degrading treatment? In international standards, child detention is not considered a desirable practice. The jurisprudence of the Council of Europe shows that when children are put in detention, this usually involves a violation of human rights. Similarly, there is no international standard on the (forced) removal of children, and it should be further discussed whether children could be deported against their will.
- The rights of young migrants should be better guaranteed. Can we accept that the EU promotes protection for children with irregular status as long as they are underage, but as soon as they turn 18 they are set to be removed? Similarly, there should not be disparity in treatment for migrant children who came to Europe after passing the age of compulsory education. At the same time, policies on minors need to consider children as vulnerable but also as competent individuals.
- It is crucial to focus on children in the most vulnerable situations (*e.g.* missing or unaccompanied children), but also the rights and vulnerabilities of other minors (*e.g.* accompanied children) should not be overshadowed.
- Participants discussed the topic of 'anchor-children' (children who arrive unaccompanied to Europe to apply for family reunification). No data suggests that this is a significant phenomenon. At the same time, common belief on the existence of such a phenomenon incentivises policies that undermine children's rights.
- Participants also discussed the concept of 'proximity' and 'jurisdiction', expressing different opinions on whether European countries should engage more in supporting the rights of children *before* they reach Europe, or whether Europe should only engage in protecting those who are on European territory and under the jurisdiction of a Member State.

Close of day take-away observations

At the end of the day, two participants were asked to share their take-away observations. They suggested that the day's discussions had shown:

- There has not been significant progress on the discussion on migrants with irregular status for the last 20 years. Progress in this area is very slow, but looking at the implementation of European legislation in national law and practice, you can realise that progress is nevertheless made.

- It is necessary to avoid staying enclosed in an academic bubble when working on these issues. More consideration must be given to public opinion and people's resentments on immigration to make sure our opinions are consistent with the reality. We must be aware of public views, notwithstanding that they are often are not based on true facts, but proxy fears. Yet, policy today can be based on such fears.
- The role of cities is crucial, yet we must distinguish between cities administered by different political parties. Different cities may adopt very different approaches to irregular migrants, including inclusive or hostile approaches.
- This area of policy and narrative show many contradictions and dichotomies that are difficult to reconcile. These include policy discrepancies at different level of governance; a dichotomy between the universality of rights and limitations based on migration status; and entitlements in law and their enjoyment in practice given the lack of firewalls for irregular migrants.
- Irregularity is a wide concept including many different situations including irregularities on the side of the state and *e.g.* the inability of states to control the informal labour market.
- The narrative and the language used in this area are crucial for policy progress.
- There are ways forward:
  - We should enable the voice of migrants to be heard more.
  - Political leadership should be developed in Europe to lead on sustainable solutions to immigration related problems. It is important (for non-academics) to take sides in the policy debate on migration.
  - The international policy framework offers several opportunities for development, starting with the Global Compact on Migration and the 2030 Agenda.

Wednesday 20th September: Criminalisation, enforcement and return

Morning Chair: **Tone Skodvin**, Chief Adviser, Department of Business and Ownership, City of Oslo, Norway

Immigration Enforcement: reducing the size of the illegal population and the harm it causes

Stephen Kershaw, Director of Strategy, Transformation and Partnerships, Home Office, Immigration Enforcement, UK

Watch the interview with Stephen Kershaw here.
Download Stephen Kershaw's PowerPoint presentation here.

The presentation introduced the aims and approach of the British Government on immigration enforcement. The Government has a clear ambition to reduce net migration to sustainable levels, and is currently preparing the UK's departure from EU. Overall, the British Home Office (HO) is aiming to employ a systematic approach to controlling immigration, and to do so it needs constantly to find a balance between the need to protect the public, tackle vulnerability and support prosperity. The HO considers overstaying and illegal entry always a breach of the rules and thus employs a range of interventions to tackle this. By doing so, the HO aims to deter exploitation and support compliance.

Immigration Enforcement (IE) is the operational command part of the border, immigration and citizenship system. IE's mission is to 'reduce the size of illegal population and the harm it causes'.

With a budget of £450m per year (40% of which is spent on immigration detention), IE is responsible for front line enforcement, casework preparation, returns, detention and tackling illegality, and has a focus on clandestine entrants, rejected asylum seekers, over-stayers, foreign national offenders and those engaging in crime. In total about 38,000 returns were implemented in the period 2016/2017. 6,364 of deportees were foreign national offenders.

An incremental framework for 'deterrence, compliance and enforcement' has been put in place. Hard edged measures have been implemented to act as a deterrent, with the idea that by making it progressively more difficult for irregular migrants to rent a room, open a bank account or obtain benefits, irregular stay is deterred. In parallel, actions against people engaging with irregular migrants (landlords or employers) are taken to create an environment of compliance.

The presentation finally addressed the immigration detention system, specifying that the UK's nine immigration removal centres detain 3,500 people. 400 additional foreign national offenders are placed in prison estates. Detention is implemented only for those migrants for whom there is a real prospect of return. 93% of detainees leave within 4 months, but the HO is trying to improve casework management and reviewing case progression and instances of judicial review to ensure that removals are swift, and possibly on the same day of apprehension. Alternatives to detention are being explored too, *e.g.* a satellite tracking system, but not 'alternatives to removal' in order not to create further pull factors.

Some Unintended Consequences of Internal Migration Control

Godfried Engberson, Professor of Sociology, Erasmus University, Rotterdam

Watch the interview with Godfried Engberson here.
Download Godfried Engberson's PowerPoint presentation here.

The presentation provided a sociological analysis of the unintended consequences of immigration removals and border control. Migration control may indeed lead to unintended social problems. For example, the closure of the border between Mexico and the US, while not stopping migration, created an undocumented underclass in the USA which did not exist when Mexicans could freely come and go between the two countries. On the other side, research has shown that 'open door policies' also led to an expansion of people smuggling, fatalities, and exploitation of loop holes. The main 'unintended consequence of border controls' is forcing people 'to go underground' – to shift from formal to informal work, from legitimate to criminal behaviour, from identifiable to unidentifiable.

The presentation remarked that another consequence is the implementation of contradictory policies between local authorities and national states. Based on a study carried out in The Hague and Amsterdam, it explained the reasons why migrants, with regular or irregular status, reside in urban spaces, showing that outcomes are shaped by spatial, economic and social opportunity structures (that is, availability of jobs, cheap housing and migrant networks). Similarly, these studies allowed an understanding of why local authorities might adopt policies of 'tolerant enforcement of immigration rules', compared to strict immigration enforcement operated by national authorities. To explain 'tolerant enforcement', the interests and preferences of three crucial 'agents' at local level (local residents, policemen, and city administrations) were taken into account, finding that:

- Residents tolerate migrants with irregular status because they haven't had a negative experience; they profit from them being there; they have strong social ties and don't want

to endanger neighbourhood relations.
- The police prioritise fighting crime over immigration enforcement; tolerate law abiding irregular migrants; and value maintaining good relations with local migrant communities.
- City governments adopt tolerant policies because they want to prevent people going 'underground'; they don't bear the costs for irregular migrants' services; and because of having limited resources they prioritise the fight against serious criminality.

The speaker concluded by suggesting there is a need to take into account the unintended negative consequences and limits of 'internal migration controls': in particular, the aforementioned contradictions within a state (national versus local); an increase in criminality; and the limitations of the control operated by local agents, because of their 'local interests' and 'practical wisdom'.

Discussion

The discussion focused on the impacts of strict immigration enforcement policies on migrants, local populations and public opinion; it also addressed the impacts of trying to create a hostile environment for irregular migrants; the costs – including moral – of efficiency in immigration enforcement; and the importance of how we talk about irregular migration and how we present the phenomenon to the public:

- Stricter immigration policies and enforcement are often justified by the argument that 'this is what the people want'. This, however, is a relative and vague concept that can be interpreted in different ways; and the public should not be used as an excuse for bad laws. It must not be forgotten that a significant part of the national population expresses votes against strict immigration policies. 'What the people want' is not often based on reality, but on myths.
- Choices on immigration policy should be influenced by different government departments working in sectors other than immigration, including health care or education. These actors can bring a voice on the negative and unintended consequences of strict enforcement policies.
- Enforcement policies should not confuse 'exploitation' with the 'material benefit' that people might obtain from engaging with irregular migrants. A taxi driver is not a smuggler and a landlord cannot be considered an exploiter if they are not taking advantage of an irregular status to get an illicit profit.
- Is the idea of creating a hostile environment for irregular migrants to deter stay workable? It implies that the destination country should be worse than the countries migrants left. Would we want Europe to be worse than the countries people escape from? Would that even be feasible?
- Creating a hostile environment for irregular migrants also has negative impacts on the interests of the local population. Businesses, employers and local communities can be hurt by such policies and ask for reform. Such policies may also deter the kind of migrants (*e.g.* highly skilled migrants) that our societies need and welcome.
- The causality effect between creating a harsh environment for those who are here and on deterring others from coming is disputable.
- When talking about a 'rise in criminality' related to immigration it is important to distinguish between crime that pre-existed immigration and the criminalisation of behaviours that were normal (*e.g.* renting a flat) and become crime because of immigration policies.
- Language: the use of terminology describing people with irregular immigration status as 'illegals' is dangerous because it dehumanizes migrants. It is a throwback in the past that

'feeds the monsters' of populism and xenophobia. Politicians should take the lead in the use of appropriate language and there are examples where tone and language have deliberately been changed, *e.g.* from the intention to create a 'hostile' to a 'compliant' environment, and to emphasise tackling exploitation.

- The 'efficiency of enforcement' is a disputable concept. What are the costs – including moral – of efficiency? Presented data shows that *e.g.* detention is highly costly and governments should and do want to consider alternatives to detention as more cost-effective and less intrusive enforcement measures.
- Achieving efficiency in securing returns can have an impact on the respect of legal guarantees for migrants' rights. Shall *e.g.* judicial reviews be defended from attempts to reduce their impact on removal procedures? Rights should not be viewed solely as 'a challenge to return'.
- Showing efficiency in enforcement practices can be misleading. We hear that return policies in Europe are not very strong, yet governments present their successes on removals. What is the real story on the efficiency of enforcement policies?
- Enforcement is not always reassuring of public fears. Rather, strong and visible enforcement could potentially have the opposite effect of causing alarm and portraying migration as a major threat.
- Migrant communities are important partners in immigration enforcement. Governments work to build increasing bonds with diaspora communities (*e.g.* raising awareness on assisted voluntary departure programmes) and migrant communities are increasingly cooperating with governments, including on enforcement actions.

The Right Balance: Smart Policing and Inclusive Immigration Policies in New York City

Bitta Mostofi, Assistant Commissioner, Mayor's Office of Immigrant Affairs, New York

Watch the interview with Bitta Mostofi here.
Download Bitta Mostofi's PowerPoint presentation (with notes) here.

The presentation outlined the actions taken by the City of New York (NYC) to enable the local undocumented population (estimated at half a million people) to participate in public life and prevent their isolation. Enabling such a significant number of people to interact with public authorities – including local police and health professionals – was crucial not only for the well-being of migrants themselves but also as a public safety issue. This is recognised across the political spectrum, as different city administrations (governed by different political parties) initiated or continued to implement policies enabling irregular migrants to interact with key services.

New York City has acknowledged that undocumented migrants are a human reality in the city, and that it is the administration's responsibility to allow these people to interact with public offices in a comfortable way as long as they are in the country. With this assumption, the city has implemented action to increase migrant communities' cooperation (and crime reporting) with the police for the sake of common safety. NYC's several initiatives to enable interactions between undocumented migrants and public authorities included *e.g.* increasing the city's resources dedicated to facilitating migrants' access to the special visas (U or T visas) allowed by national law to undocumented migrants for cooperating in crime investigations. The city also increased activities of outreach with migrant communities on the benefits of cooperating with the police. In order to increase migrants' trust in law enforcement authorities, 'stop and frisk' practices were reduced by 95%. The police also

moved away from the practice of arresting undocumented migrants in cases of minor offences, to instead give a summons (which does not expose migrants to the risk of deportation). The city invested $31m in immigration legal services and a new decision to stop immigration enforcement activities in New York's schools has recently been approved.

NYC has limited its cooperation with federal immigration authorities. Special ordinances prevent city officials from investigating individuals' immigration status and communicating sensitive immigration data to federal authorities, unless the personal has committed a serious or violent crime. The intention is not to 'harbour individuals seeking to circumvent federal law'. These policies instead aim to ensure the interests of all residents in relation to safety (an issue of outmost relevance for a city like NYC that is a top target for terrorist organisations). Ensuring that people are not scared off by the risk of deportation when interacting with local authorities is crucial to avoid the creation of underground communities which do not cooperate for the well-being and safety of the city's population. The presentation touched on the tensions with the current US federal government over these 'sanctuary ordinances'.

Finally, the speaker provided a detailed presentation of the 'IDNYC programme', the local initiative to provide a municipal identity card to all New York residents, including those who are undocumented. The speaker explained that this practice was also implemented to ensure public safety. Initially designed to allow undocumented migrants to open bank accounts (and reduce the risk of migrants becoming victims of robberies), it also allows undocumented migrants to identify themselves to the police. The presentation explained that the success of the programme (more than one million IDNYC cards have been issued) was in opening up the opportunity to obtain the card to all New York residents (not to undocumented individuals only) and in partnering with local cultural institutions that agreed, for instance, to provide free membership to New Yorkers holding the IDNYC.

Equal rights without discrimination

Inspector Michael Zwart, Amsterdam Police, the Netherlands

Watch the interview with Inspector Michael Zwart here.
Download Inspector Michael Zwart's PowerPoint presentation here.

The presentation outlined the '*Free in, free out*' policy, an innovative practice initially adopted by Amsterdam Police to ensure irregular migrants' trust towards law enforcement authorities, and eventually extended by the Dutch government to police bodies throughout the Netherlands. According to the 'free in, free out' principle, police officers are instructed not to inquire about, or to take action in relation to, the immigration status of individuals reporting a crime, so that migrants in an irregular situation are not deterred from reporting crime to the police.

The motivation for Amsterdam Police to initiate this policy as a pilot project in 2013 included:

- the acknowledgement that a significant part of the population in the Dutch capital consisted of migrants with irregular status (currently estimated at about 20,000 individuals) and that their cooperation with the police was needed;
- the fact that neither irregular entry or stay are criminal acts but an administrative offence, and that in a situation of limited resources, law enforcement authorities should prioritise the fight against crime over immigration enforcement.
- the need for the police to strengthen their intelligence within migrant communities; and

▪ the need to better protect vulnerable individuals whose irregular status exposes them to become crime victims.

To start the project, Amsterdam police sought the agreement of the national authorities responsible for victims' protection, and supported their request by arguing that the pilot would have benefits for the protection of crime victims with irregular immigration status.

The presentation outlined the modalities of implementation of the initiative, which on one side include outreach activities on the policy with migrant communities; and partnering with organisations and individuals trusted by them. On the other hand, activities of awareness-raising internally within the police were crucially implemented to make sure that police officers act in accordance with the new policy. Flyers explaining the policy were distributed to migrants, so that those wanting to report a crime could present the flyer to the local police and make sure the officer they interact with acts in accordance with the 'free in, free out' principle.

Finally, the speaker presented the positive results of the project, which led the Dutch government to adopt the 'free in, free out' principle as national policy, on the occasion of the transposition in national policy of the EU Victims directive. These results included an increase in migrants reporting crime and cooperating with the police, as well as a burden-reduction for police officers who can now legitimately prioritise the prosecution of migrants committing crime over immigration enforcement.

Discussion

The discussion focused on the positive aspects of inclusive policies for both migrants and local citizens:

- Inclusive policies and practices can be at the same time in the interest of migrants and of the national population. Arguments exposing the benefits of such policies on the local population can overcome the resistance of politicians hostile to including irregular migrants. Public safety arguments are cross-cutting and are supported by authorities and politicians across the whole political spectrum. Inclusive policies can represent a win-win situation.
- Policies that provide benefits for both migrants (irrespective of status) and nationals without targeting a specific social group can overcome public resistance and can mark the success of an inclusive practice, as shown by the IDNYC programme which is used by both US nationals and migrants.
- The adoption of inclusive policies has been possible in big cities like NYC or Amsterdam. Implementing innovative practices can be more challenging in small and medium urban centres that have smaller migrant populations and may be more conservative.
- Data shows that inclusive policies, like those implemented in New York do not undermine immigration enforcement. The number of irregular migrants apprehended in the US did not drop following the implementation of inclusive municipal practices. The number of deportations rose during the previous Obama administration.
- Advocacy for such approaches needs to reflect not only the ethics of conscience but, to convince those in charge, the ethics of responsibility. Will they be able to fulfil their responsibilities if these approaches are adopted? That is, it needs to take a whole of government approach if consensus is to be found

A personal data firewall between enforcement and services – a pan European approach

Stephanos Stavros, Head of Office of the Secretary General's Special Representative on Migration and Refugees, Council of Europe

Watch the interview with Stephanos Stavros here.
Download Stephanos Stavros' PowerPoint presentation here.

The presentation addressed the issue of the data 'firewalls' between service providers and immigration authorities with the intention of ensuring that irregular migrants do not avoid contact with public authorities for fear of being identified for deportation purposes. The speaker, in particular introduced the General Policy Recommendation No. 16 of the Council of Europe's European Commission against Racism and Intolerance (ECRI) 'on safeguarding irregularly present migrants from discrimination'[2]. This document affirms that migrants are entitled to enjoy their human rights, regardless of their irregular stay, including rights, (*i.e.* the rights to health and education, to marry, to obtain a birth registration, etc.) whose enjoyment depends on migrants' contact with public authorities. The recommendation presents 'firewalls' as the essential element that ensures that rights are exercised in practice and that rights' violations are reported to enforcement authorities. The 'firewall principle' is the rule prohibiting those responsible for ensuring the enjoyment of a right from sharing information with immigration authorities on the status of those requesting their services. Similarly, no reporting duties should be imposed on individuals and entities (*e.g.* landlords) operating in the private sector on whose action the enjoyment of a right depends. The recommendation also addresses practical implications of the firewalls principle, such as the need to avoid immigration checks in rights-sensitive areas, like schools or hospitals, or to train school officials in creating procedures that do not require documents that irregular migrants cannot produce. Additionally, the recommendation addresses racial profiling, as a threat to the possibility of irregular migrants enjoying their rights.

The speaker explained that specific firewalls are needed even in areas that might sound more controversial, such as on the occasion of labour inspections or in the criminal justice system, to allow irregular migrants to report exploitation and crime. On the other hand, the presentation clarified that with this recommendation ECRI did not aim to challenge migrants' expulsion or make deportations more difficult. On the contrary, the document also includes recommendations on removals to ensure that the rights of migrants pending return are respected.

Discussion & problem-solving exercise

Following the presentation, participants were asked to take part in a problem-solving exercise, and imagine how, in practice, a firewall could be designed for irregular migrants who are aiming to report a crime to the police, or for migrant workers involved in a labour inspection. The

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[2] Available at: http://hudoc.ecri.coe.int/eng#{"ECRIIdentifier":["REC-16-2016-016-ENG"]}

presentation and the results of the exercise led to the following considerations:

- Creating a firewall is about prioritising public interests. Strict immigration enforcement can counteract crucial public interests like fighting crime or ensuring access to justice. The fight against crime should be prioritised against immigration enforcement.
- A hierarchy of laws is needed to specify which public interests should be protected against the implications of strict immigration enforcement. Firewalls should be identified according to such a hierarchy.
- A hierarchy of laws and formal firewalls are only one aspect. 'Informal firewalls' in the means of 'internal guidelines' or practical cautions should be adopted to ensure that the firewall principle works in practice.
- Firewalls should also provide incentives for irregular migrants to come forward and contact authorities, as in the cases of the visas provided in the US for migrants reporting crime and cooperating with the police or, in the EU, the temporary permits released to victims of trafficking.
- An important role can be played by third-parties who act on behalf of irregular migrants. For example, trade unions can operate as intermediaries on the occasion of labour inspections. Similarly, third parties can play a crucial role in ensuring irregular migrants are aware of firewalls. NGO advocates in the USA operate at police stations to inform undocumented migrants of the possibility of obtaining special visas.
- The 'Don't ask, don't tell' approach is not desirable in *e.g.* labour inspections, because it would favour migrants' exploitation and underground living, as well as hinder access to protection mechanisms.
- There is a risk of 'normalising irregularity'. While certain public interests should be particularly protected through firewalls, irregular migration should never become a norm to accept, treated as an unavoidable phenomenon, or a normal way of living. Irregularity, as such, should not be protected, but reduced both through regularisations and through immigration enforcement.

Labour market enforcement and irregular migration

Patrick Taran, President, Global Migration Policy Associates; formerly Senior Migration Specialist at the International Labour Office

In discussion with:

Bridget Anderson, Professor of Migration, Mobilities and Citizenship, School of Sociology, Politics and International Studies (SPAIS), University of Bristol

Watch the interview with Patrick Taran here.
Download Patrick Taran's notes on the PowerPoint presentation here.

Interviewed by Bridget Anderson (the interviewer) on the interactions between labour law enforcement and immigration enforcement, Patrick Taran (the interviewee) presented the links between irregular migration and contemporary economies, suggesting that tolerance for migrant workers in irregular situations may reflect structural needs. The discussion highlighted the economic interest of employers and economic sectors in having access to migrants in irregular situations, and argued that national policies may be influenced by such interests. The intervention furthermore explained how the interactions between economic interests and immigration

enforcement results in fewer protections for undocumented workers, who end up exposed to exploitation and trafficking, while employers benefit from lower labour and health and safety costs.

Asked about the links between labour markets and irregular migration, the interviewee explained that nearly all migration (for whatever reasons has – labour/employment and economic activity outcomes) and nearly all migrants –(including children when they grow up or refugees) eventually fit the international convention definition of 'migrant worker' (*i.e.* a migrant who is employed in remunerative activity, is seeking employment, or has been employed) and so it is difficult to separate migration from employment or so-called labour migration. The history of immigration for example in the CANZUS countries (Canada, Australia, New Zealand and the United States) has long been a history of seeking and admitting persons with reference to labour market needs, particularly evident in those countries which have points based immigration systems.

Subsequently, the interviewee argued that a crucial question is whether irregular migration (or unauthorised migrants) is in fact 'unwanted migration'. Often migrants in irregular or 'unauthorized' situations play key roles in maintaining the performance of the economy and 'controlling' labour costs. For this reason, over the course of the last century states have often turned a 'blind eye' to undocumented migrant workers, though the way some states are now acting seems to be more aggressive. The interviewee argued that the presence and employment of migrants in irregular situations allows labour intensive and otherwise inefficient economic actors and sectors to remain in business, in particular where the most flexible cost is labour. Leaving migrant workers in irregular status also helps governments to maintain strategically important sectors such as healthcare and construction which are crucial to the economy and which otherwise would not remain affordable. Low-paid and unprotected labour of unauthorized migrants also supports maintenance of the macro economy as well as social stability through providing, for example, affordable food. If agriculture had to pay the minimum wage, many people among large proportions of poor and low-paid working people in Western countries could not afford to eat and this could lead to civil unrest. Therefore, there is an incentive for states to allow some migrants to fall into or remain in irregular situations, as these workers cannot organise, pursue unionised action to assert and defend rights to decent work and decent wages, or complain to authorities about abuse. There are examples of tacit state recognition of structural dependency on unauthorised migrants. For example, in the United States, Alan Greenspan said at one point during a period of economic expansion, that the single biggest threat to the economy was inflation driven by rising wage demand. However, there was no inflation at the time, but observers highlighted the presence of millions of workers in irregular situations providing additional labour that effectively impeded rising wages. Shortly following this intervention, immigration enforcement was quietly suspended across the country, including in workplaces.

The interviewer then focused attention on the interactions between labour regulations and immigration enforcement. The interviewee argued that in designating certain people – workers – as 'irregular' and targeting immigration enforcement action against those individuals as illegitimate, as a problem, both exploitation of those persons and harsh repression are rendered justifiable since they are, and behave, outside of the norms of a lawful democratic system. Immigration enforcement in workplaces directly prevents enforcement of labour and occupational safety and health law by either removing migrant victims of and witness to violations or silencing them – when migrants in irregular situations are those most likely subject to the worst conditions. In contrast, labour inspection cannot make distinctions on the basis of status, without otherwise leaving some workers completely unprotected and providing further incentive for exploitation. These tensions and the increasing conflation of immigration enforcement with labour inspection nonetheless

indicate the extent to which allowing some migrants to remain in irregular situations is a structural dependency.

Focusing more specifically on trafficking issues, the interviewee also shared his concerns on how trafficking, labour exploitation and migration are being conflated. Strict immigration enforcement, whether confronting labour exploitation or in the community, leads to situations in which victims are often the ones who are punished, rather than protected, and they are the ones who often lose their livelihoods and are deported. We can see this in the smuggling protocol where the protection of victims is not the primary purpose - law enforcement, immigration control, the actions of perpetrators and a presumed complicity of the person smuggled is the focus.

In order to protect people – workers – it is key to ensure minimum decent wages, fair terms and conditions of employment including health and safety protections; this can only be done through adoption and enforcement of labour standards, labour inspection reaching workplaces where migrants are employed, firewalls between labour inspection and immigration enforcement, and sanctions as deterrence to employers for violations of labour law and OSH standards, rather than any immigration law enforcement targeted at workplaces, workers or indeed employers.

Discussion

The discussion focused on whether regularisation is the answer to the challenges of irregular migration. It questioned whether states acknowledge that irregular labour serves the macro functions of the economy. Finally, it pointed out at the need for more data and research on these topics to better understand the phenomenon.

- All EU states have used regularisation at least once as a policy tool to manage the tension between labour needs and irregular migration, and while there are benefits to regularisation (such as increased tax intake generated by legitimate employment), there are some tensions within the use of this approach.
- Not only irregular migrants are exploited within the labour market. Thus, focusing policy responses only on this group may lead to tensions within the wider population.
- It can be argued that some states wish to avoid migrants' regularisation precisely because this could lead to migrants organising to obtain increased wages and improved terms and conditions, and this could lead in turn for example to increased food costs and subsequent increased rates of poverty amongst the wider population.
- There was a question mark as to the extent of the implicit complicity between the state and employers in seeking to maintain depressed wages and poor conditions as a means of supporting the macro economy. It was noted that other governments outside of the US (for example the UK) have put stringent labour market enforcement as part of their enforcement strategy.
- Immigration law and its implementation often do not reflect the needs of the economic cycle, as it lacks flexibility – seeking enforcement even when the economy is held back by labour shortages.
- The lack of a clear estimate on the numbers of irregular migrants in Europe is a challenge to proving the hypothesis outlined in this presentation and whether the traits that apply to the US (in particular related to the role of irregular migration in supporting the macro economy), also apply to Europe. The profile of Western European countries where undocumented migrants are more likely to be unemployed may challenge the hypothesis.
- There was an identified need to understand better the pattern of access to welfare benefits

and social security for undocumented migrants in Europe in order to start to put together evidence to show whether irregular migrants need to engage in employment in order to survive.

- There was also discussion as to whether there is an overlap between high levels of youth unemployment and levels of irregular migrant labour; that is, whether there is any overlap between the types of work undertaken by irregular migrants and those jobs sought by young people in these (mostly Southern European) states.

Close of day take-away observations

At the end of day, two participants were asked to share some take-away observations. They suggested that the day's discussions had shown:

- There is an inherent tension between central governments and cities. As set out in the case study from Amsterdam, we can nevertheless move from a city pilot to national policy; action can take place at the grassroots but lead to wider change.
- There are limitations to control and enforcement-based approaches. They must be coupled with a holistic approach that has regard to crime prevention, protection, child protection and public health concerns.
- Language matters - the use of terms such as 'illegal' and 'alien' must be challenged to avoid the risk of 'feeding the beast' of populism.
- Credible migration systems depend on building trust and partnership. We need to build safe spaces (including through firewalls) so that people do not live in fear. Whilst it may be true that providing these safe space may come at the expense of some enforcement activity, this may be a price worth paying in terms of upholding our values

Thursday 21st September: Social policies and access to services: opportunities and barriers in multi-level policy agendas

Morning Chair: **Annika Forsander**, Development Manager, Centre of Expertise in Immigrant Integration, Ministry of Employment and the Economy, Finland

Inclusion or exclusion from public services: the Italian case

Gabriele de Giorgi, Advisor to the Prime Minister of Italy

Watch the interview with Gabriele de Giorgi here.
Download Gabriele de Giorgi's PowerPoint presentation here.

The presentation described recent legal and policy developments in Italy in relation to irregular migration and irregular migrants' access to social services. The speaker initially set out the Italian political context on immigration, explaining that Italy has recently been through a 'migration crisis'. In spite of the 'crisis', the country aimed to adopt a 'normalised' – rather than an 'emergency' – approach to migration.

The speaker set out the case of irregular migrants' criminalisation: in 2014 the Parliament passed an act to decriminalise the crime of irregular entry and stay but the Italian government never implemented it, because the beginning of the migration crisis eroded political support for the bill, and irregular migration stayed a crime in Italy. In this context, also national amnesties are not foreseeable. Despite a long tradition of national regularisations (six amnesties in 30 years), the presentation explained that this is unlikely to happen again because of the deeply changed political and economic context. With the economic crisis, the economic contribution of migrants, including those with irregular status, is politically more disputed, and there is a recognition today that irregular immigration is a structural phenomenon that cannot be solved through ad-hoc regularisations, and more adequate answers are needed.

The presentation explained how irregular migrants' rights are protected by the Italian Constitution, which grants right to all irrespective of migration status. It also explained though, that irregular migrants have no formal prospects of regularisation in Italy, as the law does not provide any formal paths to regularisation. Therefore, although granted rights, irregular migrants are treated as people 'outside of the system'. The presentation subsequently focused on the number of irregular migrants in Italy. As per other countries, the exact number cannot be known, but several proxy figures suggest that there is an upwards trend. Moreover, the Italian practice of issuing an 'order to leave' (*foglio di via*), without a coercive action following the order, suggests that many continue living in the country as irregulars.

The presentation introduced the Italian welfare system to address the topic of irregular migrants' access to public services. It described the crucial role played by regional and local authorities, as well as by civil society (the third sector) in the Italian welfare system. The Italian 8,000 municipalities, for instance, are crucial for the provision of shelters, social housing or kindergartens. The 30,100 organisations in the third sector (state-funded) provide a real subsidiary welfare system and are key in doing what the state is legally or practically unable to do.

Migrants with Irregular situation in Portugal: are they targeted by social policies and have access to services?

Catarina Reis Oliveira, Director, Migration Observatory, High Commission for Migration, Portugal

Watch the interview with Catarina Reis Oliveira here.
Download Catarina Reis Oliveira's PowerPoint presentation here.

The presentation initially contextualised Portugal's immigration policies and explained how Portugal has invested in immigration because of the country's demographic concerns. Portugal has an ageing population with negative natural balance and negative net migration; additionally, emigration from Portugal increased in recent years, and immigration decreased. Immigration policies were also contextualised within the country's own immigration history of a former colonial empire that received immigrants and returnees from former colonies, as well as experiencing immigration from Eastern Europe. An influencing factor in Portuguese policies has also been the evidence of a positive balance between contributions from and social security benefits for migrants.

In view of this context, the country has implemented some very inclusive policies, as migrants in Portugal are seen 'as part of the solution' rather than a problem. The High Commission for Migration (the Portuguese public institute responsible for the integration of migrants) provides integration services for migrants and ethnic minorities without discriminating on the basis of nationality or legal status in the country, and facilitates regularisations.

The presentation outlined irregular migrants' main entitlements and duties in Portugal, and the country's 'humanitarian and intercultural approaches'. In particular, the presentation addressed irregular migrants' access to legalisation and regularisation processes, integration services, education, health, and nationality for children of immigrants in irregular situation. Portuguese legislation provides several possibilities for regularisation, including three formal processes regulated by the 2007 Immigration Act. Moreover, children and their parents can regularise if they had been resident for 10 years. Special opportunities are also provided for long term residents from previous Portuguese territories. As for access to health and education services, all services are made available to any resident, although different fees are charged depending on legal status. Free access is instead granted for foreign minors, public health risk cases, and maternal health. Similarly, everyone has access to education services regardless of status.

The presentation finally focused on the integration services available for irregular migrants. These include an SOS immigrant phone line; local centres for migrant integration support; and the One Stop Shops for migrants' integration where migrants can find branches of all public administration ministries in one place, and are guided on how to go through the right processes. It was explained how the High Commission interacts with all other ministries in the One Stop Shops and attends to all kinds of situations, without targeting specific groups, including irregular migrants. The practice proved positive, as collecting different departments in the same place proved efficient both for clients but also for streamlining the processes of administration.

Discussion

The discussion focused on the differences between the two described experiences, and participants remarked on their peculiarities within the European contexts.

- Sub-state authorities can play a key role in countries, like Italy, where a vast territory also

implies different regional interests that the central government cannot easily reconcile. The main difference between the two countries is in the relationship between state and regional government – Italy seems a site of contest against harmony in Portugal, in part because of dependency on irregularity in sectors of the economy, reflected in regional interests and difficult for government to reconcile.

- Harmony in policies in Portugal is facilitated by the fact that High Commission reports to the Prime Minister's office for migration issues (instead of the Ministry for internal affairs) and that integration is a responsibility of 13 Ministries (instead of just one).
- Italy and Portugal have inclusive practices that, however, are not reflected elsewhere in the EU. More attention should be given to the positive experiences of smaller countries, like Portugal, in the European debate. These experiences, can *e.g.* demonstrate that inclusive policies can be implemented without a drain on the economy, or other disadvantages. Transferability of practices to other countries is not easy, though, as a positive experience as in Portugal is linked to its specific history and economy.
- Practices that increase the number of people in irregular situations are not desirable. Increases in asylum refusals or the Italian practice of issuing '*fogli di via*' leave more people outside of services provision and the formal system, with problems also in terms of migration management.

Residents with irregular status: challenges for cities in a European policy context

Ramon Sanahuja (Municipality of Barcelona) debated with Simon Mordue (European Commission – DG Home) on European policies on irregular migration to highlight the different perspectives of European cities and European Institutions.

Ramon Sanahuja, Director of Interculturality, Municipality of Barcelona

Watch the interview with Ramon Sanahuja here.
Download Ramon Sanahuja's PowerPoint presentation (with notes) here.

The intervention initially outlined Barcelona's strategies in relation to the presence of irregular migrants in the city. It explained that while cities have no power to influence immigration flows (as immigration stays a national competence), they still have to deal with migrants with irregular status whose presence in the city is a reality. Cities have to deal with concrete issues related to their presence, such as regulating access to nursery schools, hospitals and services in general. The city of Barcelona adopted a strategic document ('*Mesura de Govern*')[3] to deal specifically with the issue and prevent migrant residents from losing their regular status ('lapsed regularity'). The city's policy goal is to improve reception and integration for all residents, irrespective of their legal status, and the reasons to do so include humanitarian, but also practical, political, economic and legal. The main rationale is the assumption that many of those with an irregular status today will eventually become regular citizens; hence, integration is desirable at the earliest stage. The measures adopted by Barcelona to improve reception and integration for irregular migrants are summarized in the above mentioned strategic document. These include facilitating universal access to municipal services through registration in the local register (*padròn*) to which any local resident (irrespective of immigration status) can and shall register; municipally-funded legal advice to encourage

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[3] Barcelona City Council (2017), *Mesura de govern per afavorir l'accés a la regularitat i prevenir la irregularitat sobrevinguda*, available at: http://www.bcn.cat/novaciutadania/pdf/mgrregularitat.pdf

regularisation and detect and prevent situations of potential 'lapsed regularity'; supporting evidence for the 'social rooting reports' which in Spanish law allow for regularisation, etc. In addition, Barcelona promotes legislation amendments at national and EU level.

The presentation then addressed the tensions between the European and national level on one side, and municipal initiatives on the other. In countries like Spain – despite a national will to implement strict immigration enforcement policies – the state may be unable effectively to remove irregular entrants, who are thus left stranded in European cities like Barcelona. Municipalities need to find practical solutions to the presence of this part of the population, but they do not receive support or funding from the central state or the EU. In view of these contradictions, the speaker finally formulated proposals for debate with the European Institutions to seek reconciliation between different levels of governance in Europe on the topic of irregular migration. The speaker in particular:

- flagged the need to have more data at EU level on the size of the phenomenon, and
- the need to compare national legislations to find the most effective ones in terms of preventing 'lapsed regularity'.

Amongst various proposals, it was further suggested that

- the national and supranational level shift from an approach exclusively based on enforcement and removals, as the experience shows this is not always effective; and
- that receivers of EU funding be able to use those funds not only to deal with irregular migrants in view of their return, but also for their integration.
- Other proposals (see presentation attached) focused on migrant minors, access to services, and voluntary returns.

Simon Mordue, Deputy Director General for Migration, DG Home, European Commission

Watch the interview with Simon Mordue here.

In reply to Ramon Sanahuja's intervention, the speaker acknowledged that the presence of non-removable irregular migrants is a challenging issue for municipalities, but stressed that this is something which the national level is better placed to handle. EU's intervention is restricted to directly supporting those migrants legally residing in the EU.

At the same time, the speaker argued that the EU is pursuing a balanced policy, one which disincentives and deters migrants from making hazardous journeys to enter or stay in the EU irregularly and prevent them from inadvertently making themselves vulnerable to exploitation. At the same time, Member States have expressed in the past quasi unanimous opposition to the development of harmonized EU solutions for more inclusive policies regarding the non-removable irregular migrants. The national level seems to remain the right level for more inclusive policies for those irregular migrants who cannot be returned.

Last years' heavy migratory flows to Europe have confronted the European Union with important challenges. As such flows have been considered as the largest 'refugee crisis' faced by Europe since the end of World War II, and the EU and national focus in Europe has been on granting protection to refugees, while ensuring that those migrants not in need of protection can be returned swiftly. European governments were divided on the responses to give to migration flows. Migration has proved a highly divisive topic amongst Member States. The European institutions were faced with the challenge of coming up with a comprehensive reply, protecting the Europe's unity and ensuring that Europe's humanitarian values are upheld by ensuring remains open to those in need of international protection.

At the same time, the EU has played a fundamental role in reducing irregular flows both through the Eastern Mediterranean (with the adoption of the EU-Turkey statement) and the Central Mediterranean route and replacing them with regular and safe migration channels. The presentation outlined the key EU actions in this respect. These include increasing legal migration avenues to Europe, as irregular flows are fed also by the paucity of regular migration channels. The EU is expanding its efforts on resettlement from both the middle-east, and countries along the central Mediterranean migration route (aiming for at least 50,000 resettlements for the next two years), and more must be done to expand legal paths for labour mobility. The EU is also in the process of putting in place pilot projects on legal migration, developed in partnership with African countries that in turn cooperate on irregular migrants' return. At the same time, a balanced policy means also a strong focus on strengthening the EU borders and making the EU return policy more effective, by for example further strengthening the operational powers of Frontex (to become responsible for all the logistics aspects of removals), and increasing when needed detention capacity in certain EU countries, while fully respecting fundamental rights.

At EU level, a strong focus is put also on integration, with an EU action plan adopted in 2016 contributing towards the creation of a level playing field on integration at EU level as well supporting Member States own schemes. Investing in integration is essential for fostering cohesive societies and in any event costs less than the cost of non-integration. EU funding plays a key role in supporting Member States in further developing their integration policies and a vast range of areas can be covered. The next Multiannual financial framework is now under preparation. In that context, it would be important to ensure that integration funding for regularly staying migrants can go directly to the cities rather than only through national governments; this would ease the pressure on municipal budgets.

The presentation, finally, restated that the space for the EU to legislate on the treatment of non removable irregular migrants stays limited. Apart from limited instances (concerning the permits for victims of trafficking and exploitation) EU past efforts to set out a framework for common standards in this area have been turned down by national governments. On the issue of funding, the EU does not have competence to provide funding to or directly support irregular migrants; the EU has however for more than a decade supported Member States to develop and foster their integration policies targeted at legally staying migrants.

Discussion

The discussion focused on the increasing entanglements between asylum and immigration policies and the need to detach them; the fragility of consensus in Europe over reforms in the asylum and migration sphere; the political crisis faced by the European Union; and the challenges of advocating for irregular migrants in a political context of crisis and division.

- The EU has increasingly been focusing solely on asylum seekers and refugees, considering irregular migrants only as 'abusers of the asylum system'. This has provoked an entanglement between EU policies on asylum and irregular immigration, as both have been targeting 'abuses of the asylum system by irregular migrants'. If EU policies take into consideration irregular migrants within the context of asylum legislation (without providing alternatives for them to regularise their status), EU policies risk incentivising irregular migrants to look for their way through the asylum system. Instead of combating abuses of the asylum system, they might be feeding them in a vicious circle. A clear distinction between asylum and immigration policies is needed. Similarly, policies and figures on irregular migrants cannot take into consideration only rejected asylum seekers.

- There is a common belief that consensus on asylum reforms, and changing the narrative on migration, can only be achieved if the number of irregular arrivals is reduced. To avoid the malfunctioning of the asylum system, further legal channels are needed; while the distinction between manifestly unfounded and founded claims shall be made swiftly. Similarly, the return of rejected asylum seekers must be immediate to avoid removals becoming impossible for refused asylum seekers who are well settled in Europe.

- The debate on asylum reforms is toxic and consensus is very fragile. It was noticed, however, that while there is a public legitimacy argument for reducing the number of irregular migrants, there is also a public legitimacy argument for acting to regulate the presence of those irregular migrants who are in Europe and cannot be returned.

- The reform of the Common European Asylum System is fundamental to safeguard Europe's unity and fundamental values, and should thus be prioritised over more divisive immigration reforms. Progress on issues that are relevant for irregular migrants might be more easily sought in agendas of EU policy other than the Home Affairs portfolio (such as Employment, Justice, Social, Economic and Integration policies). The European Parliament is also more open to discuss issues related to irregular migrants, than other European Institutions.

- Children with irregular status are in a different position compared to adults vis-à-vis EU policies in the Home Affairs agenda. Such policies have not been disregarding children, and progress on irregular children's entitlements at EU level can be sought also within the Home Affairs agenda.

- The EU is today facing a political crisis. Achieving progress at EU level on migration policies is increasingly challenging, even on issues that used to be less divisive, as in the asylum sphere. European values (*e.g.* of non-discrimination and respect of human rights) are themselves being challenged by some member states. Migrant and refugee rights' advocates need to take into consideration this new political context and to focus on what can be achieved in this new setting. The European Institutions on their side should not tolerate any challenge to European values by member states. European values are not tradable commodities: racism or lowering of the rule of law amongst EU member states must not be accepted as the price to pay for keeping regional cohesion.

Access to essential services: strategies for achieving inclusion and addressing concerns

In this session, a panel of speakers who have been key players in securing policy change in relation to access to healthcare, shelters and other essential services in Europe and in the U.S. were invited to share their experiences.

Moving Inclusive State and Local Policies in the U.S.

Tanya Broder, Senior Attorney, National Immigration Law Centre, United States

Watch the interview with Tanya Broder here.
Download Tanya Broder's PowerPoint presentation here.

The presentation set out a case study of inclusive practices at the state and local level in the US. The speaker initially outlined the US federal and state level frameworks to contextualise the issue. At federal level, those residing lawfully in the US generally must wait five years or longer to obtain welfare or other major benefit programs, and undocumented migrants are generally not eligible for anything other than emergency support. However, at the state level - when given the choice - most US states across the political spectrum chose to adopt inclusive policies for some migrants, even in more conservative states. This is particularly true in relation to undocumented children and health care (particularly prenatal care).

At the state level, there has also been a strong movement to limit entanglement with federal enforcement agencies. Some of this engagement is a result of strategic litigation, but much of it is due to grassroots organising. The presentation thus focused on some of the most significant policy changes achieved in the USA through the engagement of organisations advocating for undocumented migrants' rights. It was *e.g.* explained how following the adoption in the State of California of an initiative to allow immigration enforcement in the area of health care and other emergency services in 1994, the Latino community galvanised to organise for change. The initiative was blocked by the courts, and eventually overturned, as the composition of the legislature changed significantly. Similarly, the presentation explained how immigrant youth organised at the federal level, leading to the adoption of Deferred Action for Childhood Arrivals (DACA) under the Obama presidency to stop the deportations of immigrant youth. This organising is continuing with the Trump administration. The presentation also touched on the strategies used by migrant organisations to achieve policy change. It was explained how, for instance, health care campaigns focusing on migrants, have attempted not to favour one group at the expense of others. Slogans such as 'Health Care for all' were thus preferred to slogans such as 'families not felons'. There have been several strategies for building inclusive practices, including through civic participation, local advocacy and communication strategy. Some of these local approaches have also percolated up to the state and federal level. Details on these strategies can be found in the attached presentation.

Addressing homelessness and irregularity in the City of Utrecht

Jan Braat, Senior Policy Advisor, City of Utrecht

Watch the interview with Jan Braat here.

The presentation set out the policies adopted by the City of Utrecht to manage the presence of irregular migrants, and mitigate the negative consequences on the city of exclusionary national policy. According to national law, since 2001 rejected asylum seekers in the Netherlands lose the right to shelter 28 days after the refusal of their asylum claims, with negative consequences on Dutch cities in terms of an increase in homeless individuals. Utrecht has thus considered this national policy as 'part of the problem, not the solution', and identified practices to facilitate a route to settlement (regularisation) or return for irregular homeless migrants. After the implementation of these local practices over 15 years, the City could observe a significant reduction in homeless migrants. Results are very important to win the argument for service provision. The positive outcomes of these practices was presented: 60% of homeless migrants assisted by the City of Utrecht regularised their status, 20% returned to their countries of origin, 12% returned to the asylum system, and only 8% stayed homeless in the city. The reasons for Utrecht to endorse inclusive practices also included the city's will to adopt a 'human rights approach'. Utrecht indeed carried out strategic litigation to strengthen this approach and challenge national policy.

The presentation then outlined Utrecht's litigation strategies to support service provision. By implementing national guidance strictly (refusing housing assistance in cases where this would provoke a human rights violation), Utrecht aimed to expose the negative impacts of national policy on migrants' human rights. By doing this, the city aimed to be judicially challenged and eventually set a judicial precedent which would require provision of housing to vulnerable families. The case indeed led to a change in national policy to prevent street homelessness for undocumented migrant families. Litigation is thus part of a strategy to protect the most vulnerable. A separate case seeking the same protection for adults however did not succeed: a step too far.

The speaker explained that, at the moment Utrecht - together with other Dutch cities - is negotiating with the national government how to address the issue of local provision of services to undocumented migrants. The example of Utrecht is being used as a model, and multi-level cooperation schemes will be enhanced to find jointly a solution to the problems affecting homeless undocumented migrants.

Finally, the presentation introduced Utrecht's 'UIA Refugee Launchpad' (or 'Plan Einstein'), a project which aims to 'activate' asylum seekers and local residents together, and stimulate their personal development. Young individuals (both asylum seekers and locals) are provided accommodation and courses of English and Entrepreneurship, as well as individual guidance on how to start a business, which will be of use both if the asylum seeker is granted status, or if they return to country of origin. The project responds to a need for inclusive policies activating people from the earliest possible moment ('day one') and is also intended to create 'smart' return policies and ensure a quicker integration. Political support, standing by the policy, is also essential. The speaker explained that political support is essential to develop projects as the Plan Einstein. At the moment, the national government

supports the development of Plain-Einstein like projects, as a 'way forward'.

Access to Health Care for irregular migrants in Sweden

Dr Henry Ascher, Professor of Public Health, University of Gothenburg

Watch the interview with Dr Henry Ascher here.
Download Dr Henry Ascher's PowerPoint presentation here.

The presentation looked at access to healthcare for irregular migrants in Sweden, where from a position of restriction of care in the 1990s the law was changed in 2013 to grant increased access to healthcare for both irregular adults and children.

The presentation addressed the key drivers that allowed for this extension of provision, and focused on the arguments used by advocates campaigning for an extension of irregular migrants' access to healthcare. It explained that medical ethics were amply used to advocate for change, based on the frameworks offered by the Geneva 1948 declaration and the Lisbon Declaration on the rights of the patient (which provide strong ethical requirements for professionals in relation to their patients). Advocates also based their campaigning on human rights arguments, highlighting how Sweden's health care legislation was not consistent with international human rights law. Finally, public health arguments in relation to trauma, mental health, and communicable diseases were also used to advance the cause. These were complemented by economic arguments (showing that early interventions prove cost effective).

The campaign secured an official inquiry report, with the advocacy of professionals alongside supportive coverage from journalists. The cooperation of different actors in civil society and among medical professionals proved crucial. The organisation 'Rosengrenska' was particularly key in framing the argument consistently as a medical ethics question, and not as a migration issue. The 'Right to Health Care' platform was set up bringing together a wide range of health care professionals, civil society and faith groups insisting that all people should be treated in a way that only has regard to clinical need. A critical report from the UN Rapporteur on Health, that Sweden was in breach of human rights standards, was influential. The decisions of certain hospitals to to provide health care to all also proved a strong political message. The speaker explained how this pressure led to the new law allowing for extended provision.

Undocumented migrant women's rights to live free from violence in the Istanbul Convention

Rosa Logar, President, Women Against Violence Europe

Watch the interview with Rosa Logar here.
Download Rosa Logar's PowerPoint presentation here.

The presentation looked at the right of undocumented women to live free from violence and outlined how the Istanbul Convention protects the rights of women with irregular migration status. The Convention builds on other human rights declarations, but provides greater detail in relation to gender based violence and covers all forms of violence against women in times of peace and war.

The treaty guarantees the rights of undocumented women as it takes a human rights approach that places the rights of *all* women (regardless of status) at its heart. It specifically protects and promotes the rights of everyone to live free from violence in the place that they are (rather than solely in their country of origin). Although some negotiators wished for an explicit mention of

undocumented migrant women in the text, resistance from several European countries to explicit mentions allowed for the protection of undocumented women under the Convention only in an implicit manner. The rights of undocumented women are rather mainstreamed throughout the treaty. The Convention thus has a strong anti-discrimination bias (compared to other human rights conventions that prove less applicable to undocumented migrants) and places the rights of the victim at the centre of all measures. These principles mean that under the Convention, individuals should be treated as victims of violence, rather than as an irregular migrant. The presentation finally remarked on the importance – with regard to the situation of undocumented migrants – of the pro-active approach adopted by the Convention, meaning that states should not only be reactive in protecting undocumented women from violence, but should take a proactive approach (as it has been borne out in a number of pieces of recent case law).

Discussion

The discussion focused on the importance of mobilising and organising to achieve progress on irregular migrants' inclusion; the importance of human rights law; and of monitoring and focusing on the implementation in practice of legal provisions.

- Community organising and the representation of migrants themselves in the debate are important factors shaping reforms. Organising (and its impacts) varies in different national contexts, and between Europe and the US. Representation of migrants can be challenging, as they lack citizenship and voting rights. Initiatives to increase migrants' representation must be found. Portugal, for instance, has sought to increase representation through a recognition scheme for immigrant associations and through the use of intercultural mediators.
- The mobilisation of the medical profession has been key in achieving progress in Sweden (and elsewhere) and it would be desirable that medical associations undertake similar initiatives internationally, as also proposed by the World Health Organisation.
- There is an increasingly false dichotomy between refugees and migrants with the first being seen as deserving and not the second. States and advocates must consider the international human rights frameworks beyond the refugee framework. The International Human Rights Bill applies to all, irrespective of migration status, while the international and EU legal refugee framework simply provides additional rights.
- Criminalisation of irregular migrants has affected their enjoyment of human rights. It must not be forgotten that the crime of entering and staying illegally does not necessarily cause harm to individuals, or intrinsically pose a threat to security.
- In relation to the Istanbul Convention it was noted that – as per other legal provisions on irregular migrants – what is key is how it is transposed into national law and implemented in practice. Monitoring of implementation is crucial for the rights of undocumented migrants to be protected.

Close of day take-away observations.

Two participants asked to make closing remarks suggested that the day's discussions had shown:

- Intentionality and adopting a deliberative, forward thinking approach is necessary. It is about choosing long-term solutions over short-term responses, intentionality over unintentional consequences. Positive experiences looking at long-term solutions can be found (as in Portugal, for instance) and they contrast to short term policies which are

described as a 'crisis' and the lack of official systems.

- It is important to have strategies for change. It is crucial to identify real issues, affecting real people, at city level (and by NGOs), and to build specific strategies, with broad coalitions across sectors, to address them.
- To have a good strategy you need to look into how change actually happens. More pragmatic/ problem solving approaches must be identified. In the migration field, this can happen by humanising the issue (*e.g.* via real stories) and by creating a narrative that sees migration as an opportunity. Organising and including migrants' voice in the debate is also key. Advocates should 'pick their battles', according to what is achievable. Campaigners should not be pitting different groups against each other.
- It is also important to include smaller cities in exchange programmes to look at places in which change has happened without large amounts of resources.

Symposium participants visiting Merton College in Oxford

Chair: **Dr Sarah Spencer**, Director of Global Exchange on Migration and Diversity

Framing discourse on 'illegal' migrants: messaging and the media in Europe and the US

Frank Sharry, Executive Director, America's Voice

Watch the interview with Frank Sharry here.

The presentation focused on the experience of US advocates seeking to shift the narrative on irregular migration in the USA, with references to European experiences. While the policy making process in Europe is different to the US, the speaker remarked that the narrative and political discourse on irregular migration in Europe and America are remarkably similar and there are lessons to be learnt from the American experience.

The presentation explained that migrant rights advocates in the USA have been refining their strategies starting from 1994 when, following a clamorous incident involving asylum seekers, a populist backlash against migrants and asylum seekers spread out in the country. Advocates' responses to this backlash showed a lack of preparation within the NGO sector on how to engage in the immigration debate, and advocates lost control of the debate in a media environment extremely hostile towards migrants. As a consequence, harsher policies towards asylum seekers were adopted. This experience offered lessons to the NGO sector on the need to prepare strategies on how to engage in the political debate. The three key messages adopted by the NGO sector at that time (scapegoating is often based on racism and xenophobia; immigrants are good for the economy; knowing the facts allows you to change people's mind) proved ineffectual and so began a process of refining advocates' messaging. Advocates developed new tactics in order to meet the overall aim of seeking an immigration reform that would allow for the legalisation of the 12 million undocumented people in the US, and ultimately provide a route to citizenship. Advocacy for a comprehensive immigration reform started in the mid-80s and since has been a journey of 'almost, but not quite' in relation to the attempts to pass a comprehensive reform. While such attempts have not led to such a reform yet, partial changes were achieved in smaller steps, such as the executive orders which led to the Deferred Action for Childhood Arrivals (DACA), and changes in priorities for immigration enforcement.

The process of developing new tactics started with a deep dive on the US public opinion on immigration which showed a hard core of pro and anti-immigration public opinion sitting at 10% on either side. Of the 80% in the middle, 40% leaned pro and 40% anti. It was noted that these percentages could be shaped and shifted, if impact was targeted towards the 80% in the middle. The key issues identified to resonate in that 80% were:

- management and control;
- economic impacts and cost;
- culture and language.

Advocates equally realised that their language was reactive and focussed on defending the *status quo* – meaning that the argument was all being played on the turf of those who were anti-migration reform. By vacating the space in the debate occupied by those with concerns about immigration they were allowing anti-immigration advocates to fill it. A key question was therefore to develop a new narrative frame based on solutions and problem solving, rather than defending a *status quo* which the public did not accept.

A new narrative was adopted, in relation to management and control, focusing on 'modernising the immigration system' through effective, targeted enforcement which matched with the legalisation of the undocumented. This narrative would incentive public confidence in the proposed system, while promoting integration and fighting the black market of exploitation. In relation to economic impacts, research and narrative was shifted from the role of migrants in the economy today to their role in future dynamic economic growth. On culture and language, instead of the defensive frame, the new narrative frame focussed on solutions in relation to creating new Americans and providing a more comprehensive integration strategy, including greater access to English language classes. This new frame allowed a shift in public opinion in favour of comprehensive immigration reform, though the virulence of the relatively small number of people who were strongly anti was much more powerful than the 'mile wide but inch deep support' of those who were strongly pro. Shifting the narrative was not enough. There was also a need to strengthen, organise and expand the activist base and build a coalition of support across sectors, including 'Bibles, Badges (law enforcement) and Business'. Following the adoption of this new framework, public opinion today has deeply changed with estimates suggesting that in 2017, 30% of public opinion is strongly anti-immigration reform, 40% strongly pro, 10% lean anti and 20% lean pro, with 80% support for DACA.

Finally, the speaker reflected on comparisons with the European context, observing that countries like Germany and the Netherlands have done a better job in holding the middle and mobilising the base. However, the absence of a strong response to arguments of management, sovereignty and control with regard to migrant arrivals to the EU and the dynamics of the Brexit vote has driven some dynamics similar to those observed in the US.

Discussion

The discussion focused on how to build a narrative around immigration reforms and the rights of irregular migrants. It considered the features of todays 'post factual societies', diverging opinion of migrant rights' supporters, the importance of the terminology used, the challenges of measuring public opinion, and the need for pragmatism.

- The role of 'arguments' in 'post factual' societies: it is both important not to cede the argument to those who wish to avoid facts, but at the same time to realise that facts don't necessarily shift views. It is both important to hold the line - for example to counter myths (such as that migrants commit higher rates of crime, which academic research in the US has disproved) and to recognise that 'fact checking' may not always be effective.
- The narrative of the 'white working class' reduces solidarity between the working class in general.
- Coalitions of differing activist organisations with differing aims and objectives can be held together in trying to shift the narrative frame. By creating a sense of a movement, different views are partially mitigated, but it still remains a challenge within the NGO sector. There needs to be a plurality of approaches speaking to the activist base and the 'public in the middle', as a 'both/and' rather than an 'either/or'.

- The use of the term 'illegal' migrant by the media, including progressive media, is problematic in terms of narrative development. The American experience shows there has been some success in expanding the use of the term 'undocumented' instead of 'illegal' over time through campaigns and the work of organisations like 'Define American'. Other organisations have been effective in reshaping arguments in relation to Muslims and changing the frame of the debate. Influencing the narrative and terminology should initially target progressive media and then move to the centre.
- The use of opinion polls and how people self-report their views may be quite different to how they behave in the privacy of the ballot box. The polls study is an unreliable science and so must be taken critically, often used in concert with qualitative methods such as focus groups and dial testing and real time testing of arguments.
- A balance is to be sought in relation to rights based arguments, vulnerability and values in terms of their effectiveness and pragmatism. There is a need for community organising to sit underneath this. An example of this is the '3 million' campaign representing EU nationals in the UK and the way that this has used both a rights based approach and legal argument, alongside community organising and work on shaping a narrative and campaign.

Take-away themes, reflections and forward agendas

Chair: **Sarah Spencer**, Director, Global Exchange on Migration and Diversity

Discussion led by: **Michele LeVoy**, Director, Platform on International Cooperation on Undocumented Migrants (PICUM)

Download Michele LeVoy's PowerPoint presentation here.

This final session drew out some of the the key learnings and reflections that emerged in the debates throughout the symposium and potential future actions that had been identified.

Michele LeVoy first highlighted the importance of the conceptual framing of irregular migrants as a theme that recurred throughout the symposium: whether irregularity should be seen as a crime or, in a more nuanced way, whether portrayal should focus on the dimensions that cause harm; and the contrast between a perception of criminality and the recognition in international human rights law that human rights apply to all people, regardless of immigration status. In policy responses, it had been clear that governments are also conflicted, having to balance a range of interests that call for differing approaches. Migration management policies, moreover, regularly lead to unintended consequences. Striking an appropriate balance in policy measures is an issue which has the potential, as one participant said, to tear the EU apart; and yet European values surely should not be seen as tradable commodities. Political leadership is needed to find a proportional way forward. There is no technocratic solution. There is no easy answer to increasing the rate of returns, for instance, and strict enforcement is one area where unintended consequences have been evident; but there has been a reluctance to acknowledge to the public the limits of what can be achieved through enforcement.

Looking forward, it was clear from the discussions that, if not all irregular migrants will be removed or leave voluntarily, greater clarity is needed in the prioritisation of enforcement relative to competing priorities. There are examples of this working as we saw in the Netherlands in relation to irregular migrants being able to report information on crimes without themselves being detained: balancing enforcement with community safety objectives. Other examples had been given of constructive interventions including legal advice on resolving immigration status or return. It had been striking how many pragmatic reasons had been cited for providing a level of inclusion into public services, from public health to crime prevention, not only ethical concern for individuals. At the level of migration management, developing sustainable pathways for legal migration were one way forward, if they are not limited only to the higher skill levels. For those in-country, mechanisms to avoid lapsing into irregularity and pathways back to regularity had also been discussed. In that discussion, ensuring pathways for children had been emphasised as of particular importance, noting constructive measures in Portugal; as had measures for ensuring unaccompanied children do not pass from a state of protection to one of irregularity overnight when they turn 18. Laws and practices on detention in Europe, including of children and their families, seem increasingly distant from the normative framework currently developing in the Council of Europe and UN.

At a practical level, a strong theme had been the need to mainstream management of irregularity across government ministries (and similarly across EU Directorates and municipal departments), reflecting the conflicting priorities at stake, and to put in place the data firewall between enforcement and service delivery so strongly advocated by the Council of Europe's ECRI guidance. Recognising that it is regional and local tiers of government that have to deal with the consequences of the presence and exclusion of irregular migrants, it had been well argued that they need to be given a voice in determining the policy priorities relating to this group of people.

Those closest to irregular migrants, civil society organisations and irregular migrants themselves also need to be heard.

Two final themes had come through strongly. First, the need for more accurate data and evidence on irregular migrants; to inform policy making and to address myths and misconceptions. The most authoritative estimate of irregular migrants in the EU is now ten years out of date, and more understanding is needed on the ways in which people become irregular so that more effective steps can be taken to avoid it. Second, the need to reframe the debate, in which two issues in particular had been raised: the importance of terminology that broadens rather than narrows our understanding of irregularity (and so avoidance of 'illegal'); and contextualising irregular migrants among other marginalised populations and not as posing a threat to them.

A number of opportunities for shifting agendas had been identified during the discussions, including the UN Global Compact that was discussed in the opening session. Repeatedly there had been reminders of the need to balance recognition of urgency with realism, for advocates for reform to work towards what is achievable, in the short and long term. Strategies for reform, moreover, are multi-faceted, including social policy agendas where the question is inclusion not migration policy. Progress can be made on many fronts and by many actors from those in high-level policy agendas to irregular migrants themselves.

Discussion

The discussion focused on shifting the narrative; on the need for realism and for pragmatism in a policy debate that must include enforcement; and on the need for multi-stakeholder approaches.

- The toxicity of the current narrative on 'illegal' and 'unwanted' people is alarmingly reminiscent of the discriminating narratives which led to the atrocities in 20th Century Europe. Associating irregular migrants with criminality feeds fears and xenophobic discourse. Such a narrative must not become 'normalised' but be challenged. We should be vigilant in documenting what is becoming 'normalised' to denounce unacceptable policies and practices.

- Today's clash of values on immigration touches on the very fundamentals of European Constitutions, including non-discrimination, human rights and the rule of law. In the recent past the arguments of human rights activists have sometimes proven ineffective. Political and public discourse has often framed human rights as an 'obstacle' to public goals, instead of non-renounceable values, with incommensurable risks for the rule of law. Human rights arguments must be reinforced, but they should be accompanied by other pragmatic and politically appealing arguments. While public opinion should never be estranged from human rights, progress on migrants' rights will not be achieved solely on the basis of human rights/legal arguments.

- The debate on irregular migrants must be realistic, sustainable and include enforcement. It cannot advance by proposing unsustainable solutions. Arguments proposing 'open borders' or simply challenging irregular migrants' removal do not have traction. Recent experiences in Germany and Italy show that uncontrolled flows provoke a backlash against immigration and favour restrictive policies.

- Migrant rights advocates will gain traction with public opinion if they are realistic and include removals and enforcement in the debate. A pragmatic approach does not rule out enforcement, but informs the way in which it should be implemented in an appropriate way.

- The immigration debate must not normalise irregularity. Unregulated migration must not become the norm. It is a failure of migration policies, and as such must be avoided.

- Good policies on irregular immigration adopt pragmatic and flexible approaches. Policies solely focused on return have tangible negative impacts on public interests. Yet, there is no other

policy area where control assumes such a central position. Migration policies should look pragmatically at the different impacts of strict enforcement.

- Inclusive practices of local authorities have proven highly effective, while deterrence policies have shown many flaws. The experiences of local governments offer lessons to be learnt on how to find a balance between deterrence and inclusion.
- Good immigration policies require partnerships, multi-stakeholder approaches and widening coalitions. Migration involves a variety of actors, and different voices can contribute in the migration debate with diversified perspectives. The added value of the Autumn Academy has been the diversity of perspectives of different interlocutors who rarely happen to communicate. Such exchanges on migration between very different actors represent progress from the past.
- Authorities at different levels of governance must be involved in the debate, as well as authorities in different departments of national governments. Cross-departmental partnerships (including ministries responsible for social policies, economy and justice) and partnerships between different levels of governance (municipalities and regions) are crucial to devise policies that take due consideration of the different interests involved in migration management.
- The debate on immigration should be a single European discussion. European governments should work to find a common position, instead of diverging.
- The voice of migrants and migrant-led communities should be better heard. Employers and businesses associations can also contribute to the debate, together with faith-based organisations, civil society, local communities (including sport clubs and cultural institutions). Partnerships and coalition building between such diverse actors are key to making progress.
- The academic world plays a key role in informing these different actors. Academic research can offer the foundations for movements for change based on facts.
- Migrant rights advocates can benefit from partnering with government officials, immigration enforcement authorities, and vice versa.

Sarah Spencer closed the symposium with thanks to participants, to the Social Change Initiative, and to colleagues including Nathan Grassi for superb organisation. Finally, she encouraged participants to ensure that they provide feedback over the coming months on ways in which their participation in the symposium had contributed to changes in policy and practice. It was already clear from discussions during the symposium that new ideas and relationships had developed and she hoped that, in many as yet unanticipated ways, they would bear fruit.

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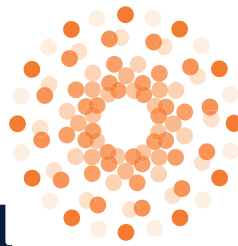
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The Global Exchange on Migration and Diversity is an ambitious initiative at the Centre on Migration, Policy and Society (COMPAS) opening up opportunities for knowledge exchange and longer term collaboration between those working in the migration field.