

Training on International  
Migration Law and International Standards  
2 - 3 March 2017

Summary Report



Under the framework of the *EU-China Dialogue on Migration and Mobility Support Project*, the International Organization for Migration (IOM) organized a two-day *Training on International Migration Law (IML) and International Standards* for Chinese authorities. The activity was held in Beijing on the 2<sup>nd</sup> and 3<sup>rd</sup> of March gathering 51 key Chinese officials from the Ministry of Foreign Affairs (MFA) including many provincial service bureaus, Ministry of Commerce (MOFCOM), Ministry of Civil Affairs (MCA), Ministry of Human Resources and Social Security (MHRSS), Ministry of Public Security (MPS), State Administration for Foreign Expert Affairs (SAFEA), National Health and Family Planning Commission (NHFPC) as well as several senior academic experts.

This training aimed at enhancing Chinese general understanding for cooperative migration governance based on international standards as well as to highlight the need to protect the rights of all migrants. International Migration Law (IML) is composed of several (bilateral or multilateral) treaties or agreements but there is no comprehensive legal instrument at the international level. Moreover, there are various departments and authorities responsible for different aspects of migration management.



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This event represented an ideal opportunity for the diverse authorities to learn more on the migration-related standards, instruments and frameworks as well as to exchange on best practices and migration management strategies with the aim of improving the overall Chinese migration governance.

The training was conducted by experts on migration law: Ms. Kristina Touzenis, Head of IML Unit at IOM headquarters in Geneva and Dr. Jean-Pierre Gauci, an academician and IML specialist. The Director of the ILO Country Office for China and Mongolia, Mr. Tim De Meyer also facilitated a session on labor migration and its specific standards and conventions.

### *Opening*

In his **opening remarks**, Mr. Marcin Grabiec, Home Affairs Counsellor, European Delegation to China and Mongolia, emphasized the importance to acknowledge that migration and the protection of the rights of migrants is a global responsibility for all countries and their partners worldwide. Mr. TIAN Lin, Counsellor, from the Department of International Organizations and Conferences, Ministry of Foreign Affairs, highlighted that China has been an active country for sending people overseas but also, more and more, for receiving people from abroad and that this training was a good opportunity for the participants of all ministries to learn from the experience of the international community.

Migration has the potential to drive labor market surpluses and economic transformation and that an enhanced collaboration in this area with all partners should be beneficial to all as noted by Mr. Tim De Meyer, Director, ILO Country Office for China and Mongolia. Mr. Pär Liljert, DG Special Envoy and Head of Office, IOM China, thanked all the participants for joining the training and acknowledged that it provided the perfect opportunity to deliberate and exchange experiences and best practices between provinces, agencies and experts.

### *Highlights/key points of the sessions*

#### *Overview of International Migration Law*

*Sources of International Migration Law:* Migration should be central in the agenda of all governments and should be addressed with a global lens as it is an issue of international governance. A general understanding of the international legal framework surrounding migration is essential for everyone charged with aspects of migration management to build sustainable migration policies. Furthermore, international standards are of particular importance when it comes to protecting the rights of migrants and the International Human Rights Law framework must be considered in this regard. Some clarifications on migration terminology were also made during this introduction session, defining notions as migrant, asylum seeker, refugee, international displaced person as well as stateless person.



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As there is no comprehensive legal instrument to regulate the different aspects of migration, sources are numerous and can be found at national, regional as well as international levels. In this respect, Human Rights Law, Refugee Law, Labor Law, Nationality Law, Trade Law, Maritime and Air Law, Criminal Law as well as Consular and Diplomatic Law are particularly relevant when it comes to migration.

*National and International Systems of Protection:* This session aimed at identifying the different actors involved at various levels in the protection of migrants and their respective responsibilities, as well as explaining the mechanisms to ensure the implementation of international standards. States responsibilities regarding the protection of migrants were emphasized and the role of the United Nations (UN) in ensuring that the rights of migrants are protected was highlighted.

### International Migration Law in Practice

*Migration Law: Focus on National Level – The Maltese Case:* Citing Malta as an example, the session showed how international law and European law regarding migration can affect national laws as well as how national governments and authorities implement migration policies in compliance with global and regional standards. This case study provided a good basis to discuss best practices and challenges on migration management from a country perspective.

*Principles Surrounding Entry:* This interactive session intended to explain the principles that limit States authorities at the borders in case of departure from the country of origin and arrival in the country of destination. Using simulated situations as examples, participants deliberated on practical remedial solutions that sometimes did not strictly fit with the legal provisions and demonstrated the challenge to find a balance between rules/regulations and practice. The discussions on the examples helped the participants to familiarize themselves with migration-related concepts as the non-refoulement principle, collective expulsion, family reunification as well as state sovereignty and its relation with International Law.

*During the group discussion,* questions were raised on the link between sovereignty of States and international law and it was clarified that States sign the different instruments in their sovereignty and application of the standards should follow through. Chinese officials also showed interest in understanding more about the Global Compact on Migration and its foreseen impact on migration management. It was clarified that the Global Compact on Migration would not consist of a treaty regulating migration given the various aspects it will cover but rather a new non-binding document, based on current legislation with guidelines and agreed targets/goals to be achieved.



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### Migration Law: Focus on Labor

**Provisions for Labor Migration:** The second day of the training started with a general introduction to International Labor Standards related to migration for the purpose of employment and migrant workers. While States are sovereign to regulate the access to their territory for foreigners coming to work, the International Labor Organization (ILO) has always promoted decent work conditions for national and non-nationals alike. Moreover, migration-related labor law should protect regular as well as irregular migrants. In this respect, ILO suggests to amend the provisions of immigration policies that provide loopholes for irregular labour migration, which does not fall only into the hands of enforcement agencies.

**Human Trafficking and Migrant Smuggling:** This session looked at the distinctions and interplay between smuggling and trafficking, and how these criminal acts violate the regular migration channels. The two international conventions covering smuggling and trafficking both respectively aim to assist the victims and protect their rights while promoting cooperation among States as well as pushing for prevention and combatting those criminal acts. States and their authorities have multiple roles to play to achieve those objectives, especially regarding the identification and assistance to victims. The alternative option for States to combat smuggling and trafficking is to make available adequate migration channels linked to trends in new migration/inflows. China has made progress regarding counter-trafficking laws and there is inter-ministerial cooperation to fight trafficking but there is still room for improvement (e.g. regarding a suitable migration strategy for foreigners coming into China to marry Chinese nationals).

### Migration Law: Consular Protection

**Consular Support to Nations and Evacuation of Nationals:** Migrants may need consular assistance generally in two cases: evacuation and cases of distress. In the context of migration, consular assistance could be needed when irregular migrants are held in detention. International organizations (as IOM) can step in to help countries of origin to assist their nationals abroad as well as countries of destination to assist foreigners in trouble. Officials from MFA noticed that China provides help its nationals abroad (via a hotline, etc) and non-nationals on its territory when in situation of distress. The support from IOM was welcomed with regard to further training of consular staff. The participants acknowledged that international best practices are interesting for China.

*During the group discussions on the subject “How does my authority deal with international migration?”, participants revealed that there are many authorities responsible for migration-related issues and that better cooperation between them (as well as with International Organizations) is needed to enhance migration management and the protection of the rights of migrants. Moreover, it is important to have legal basis in accordance with international standards (notably Human rights Law) to deal with migration. China, as an emerging country which has to deal with new migration movements, has a good opportunity to build appropriate migration policies and that authorities should continue and enhance the programs they started.*



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### Migration Law: Crosscutting Aspects

***Application of Non-Discrimination to Migrants:*** This session highlighted the importance of Human Rights and its core values in migration management. Human Rights should apply to everyone within the jurisdiction of a given country, including to migrants. Furthermore, migration laws should apply to regular and irregular migrants without discrimination. Yet, distinction and discrimination are not the same. Indeed, distinction is not prohibited as long as the differential treatment is legal, has a legitimate aim and is proportionate to this aim. To conclude, distinction between nationals and non-nationals are not prohibited, however, discrimination is not allowed and respect for Human Rights is essential.

***Protection of Migrant Children:*** Migrant children are particularly vulnerable and should be granted with particular protections. According to the convention on the Rights of the Child, children's best interest should be a primary consideration in all decisions concerning them. In the context of migration, it means that children should never be held in detention and that they shall not be separated from their parents or caregivers in all phases of migration.

***Principle Surrounding Exit of the Country:*** This last session was interactive looking at how the fundamental principle in migration management is that States are sovereign to decide their migration policies but it must be done in full respect of international commitments. In this regard, if States cannot expel their own nationals, they can decide who, among the foreigners, must leave the country. Nevertheless, they must respect the principle of non-refoulement, the right to family life and the prohibition of collective expulsion.

### Summary of considerations

The following points reflect the outstanding features of the training:

- International Migration Law is indispensable for any country willing to have adequate migration policies;
- Protecting the rights of all migrants is essential;
- Each country has the sovereignty when it comes to migration management but it must be done in full respect with international commitments;
- Strong cooperation and timely sharing of adequate information between countries, states authorities at national, regional and local levels and international organizations is vital and of critical value;
- IOM works with partner governments to assist countries in improving their migration policies and pursue best international practices. IOM also provides support to vulnerable migrants (either nationals in difficulties abroad or foreigners in distress in country of destination)

### Annexes:

Annex 1: Agenda & List of participants

Annex 2: Evaluation Questionnaire Summary