

Madam Chairperson, moderators, distinguished participants,

It is a pleasure and an honour to be part of this important session.

I realise that much of what we are discussing today and tomorrow is sobering. Migrant smuggling and trafficking in persons inflict significant and far-reaching harm: damaging individuals, families and communities; enriching criminals; threatening the rule of law; and undermining public support for enlightened and humanitarian migration policies.

But, at least in relation to the specific subject matter of this session, we should take a brief moment to also reflect on how far we have come, and how quickly.

In December 2000, at the time the Trafficking Protocol was adopted, the world was indeed a very different place:

- Very few countries had legislated against what we now understand to be ‘trafficking in persons’
- Victims of trafficking were being routinely criminalized and deported
- The prosecution of exploiters was almost unheard of
- There were **no** regional treaties, no bilateral agreements, **no** international guidelines on agreed procedures on responding to trafficking
- And our knowledge base was very poor - we had little understanding of how trafficking was happening; why it was happening and who was responsible.

Fast forward to 2017 and it becomes clear just how much has changed, and how quickly.

- The Trafficking Protocol has been almost universally ratified.
- And new treaties on trafficking – with stronger provisions than the Protocol – have been adopted in Europe and South East Asia
- International and regional bodies: from the African Union to ASEAN; from the UN’s human rights system to the Security Council– have acknowledged trafficking as a major concern and taken concrete steps to address this issue.

At the national level, the situation today is also very different:

- Almost every country has criminalised trafficking
- Most have put in place at least some measures of protection and support for victims
- Many have developed specialist institutions and structures to fight trafficking: from anti-trafficking investigation teams to rapporteurs or commissioners charged with guiding and monitoring the national response.
- And we are seeing real innovation, for example: efforts to involve business – and changes in laws to reflect newly recognised forms of exploitation such as forced criminality.

Our **understanding** is also much better. Today we know more than ever before about what is happening.

We know, for example:

- That trafficking affects all countries in all regions: that there are no exceptions
- We know that **conflict** and trafficking go hand in hand: that trafficking occurs **during** conflict; that it pursues and threatens those **fleeing** conflict; that it is a feature of **post-conflict** societies.
- We know that the **end purposes of trafficking** are as varied as the potential for profit: that individuals will be exploited for their labour, for their sexuality, for their body parts; that they will be forced into fighting, into committing crimes, into sham marriages.
- We now understand, all too well, that **responses** to trafficking must be both deep and wide: that governments must work closely with civil society and the private sector for example; that prosecuting trafficking must go hand in hand with efforts to address vulnerabilities; that confronting demand for the goods and services produced by trafficking is essential to making a difference

We have reason to feel proud about these achievements.

But I believe there is absolutely no room for complacency.

In the few minutes remaining I will highlight **two 'myths'** about our response to human trafficking: two stories we tell ourselves and each other that are not

strictly true – stories that are dangerous because they provide us with false comfort.

### **The first myth is that prosecution is working:**

Trafficking and related forms of exploitation such as forced labour and forced marriage are crimes. It makes sense that international, regional and national frameworks to address trafficking prioritise prosecution and punishment.

As a criminal justice practitioner, I have been working on this aspect of the trafficking response for more than 20 years. While my commitment is unwavering, I am forced admit that the results on this front have been miserable.

We might not know exact figures, but there is agreement that the number of trafficked persons in the world can be measured in the tens of millions.

Last year, just over [9,000 convictions](#) for trafficking offences were reported – **worldwide**. And critically, more than 90% of these cases related to just one single form, trafficking for sexual exploitation. This means that in 2016, worldwide, there were less than 1,000 convictions for labour trafficking.

The consequences of not doing enough to prosecute exploiters are stark and shameful: virtual impunity for offenders and an unconscionable lack of justice for victims.

But we need be mindful of the fact that pushing for more convictions is not without its complications.

- An effective criminal justice response to trafficking requires good laws, honest, highly skilled officials, and strong institutions.
- As the numbers show, even the most advanced criminal justice systems experience great difficulty securing convictions for these complex offences.
- Pressuring underdeveloped, often corrupt criminal justice systems to improve their dismal prosecution rates contributes directly to serious miscarriages of justice. I am speaking here about unfair trials, unsafe convictions and the imposition of grossly disproportionate penalties.

These are real. They are happening every day, in all parts of the world.

We **need** to get the criminal justice part of the response right. Prosecution *should* work but at present it doesn't, anywhere, not in any country.

States and the international community must be prepared to admit this for the spectacular failure it is - and we must commit to finding out what is going so terribly wrong.

An analysis of the criminal justice response is likely to reveal that overcomplicated laws; a lack of alternative offences; and under-incentivised leadership are all important contributing factors.

But my experiences on the criminal justice front line has convinced me that the main problem is that *we still don't care enough*. Like so many other crimes that predominantly affect women, the poor and the powerless, trafficking is just not a high priority in the criminal justice system of *any country*. Until *that* changes, it is very unlikely we will see any real improvement.

**The second myth is that trafficking and migrant smuggling are two completely different phenomena, requiring two very different responses.**

Certainly, when these crimes were first being addressed by the international community, there was good reason to separate out the criminal exploitation of human beings for private profit on the one hand, and the facilitated movement of migrants for profit on the other.

We are fortunate to have in place two legal instruments that address these two phenomena separately and comprehensively.

The trouble has come with us trying to maintain this distinction in the real world. That is not difficult in relation to some migration routes. For example, for reasons of geography and demography, migrant smuggling flows to Australia almost never involve the crime of trafficking.

But the same cannot be said of other parts of the world.

1. We know, for example, that many migrants seeking to enter Europe with the help of paid facilitators and abused terribly in the course of their journey – that many end up in a situation of exploitation from which they cannot escape.
2. In South East Asia we know that many asylum seekers persecution have been trafficked for extortion and forced labour.

I could give many more example, but the point is a simple one.

As smuggling becomes the ‘new normal’ in irregular migration, there is growing evidence that that smugglers are increasingly taking on the role of trafficker: using their clients for extortion, compelling them into situations of sexual enslavement; selling them for forced labour.

The blurring of the lines between smuggling and trafficking – and the widespread failure of States to identify victims of trafficking among smuggled migrants - has significant implications.

Not least, we are compounding the criminal justice weaknesses I have already spoken of – we are failing to identify, investigate and prosecute perpetrators of serious exploitation.

We are also failing the victims: under the legal framework developed for migrant smuggling, the individuals involved are not considered to be victims. They often have no right to support and assistance, no right to seek remedies for the harms committed against them, no right to protection from further harm.

This stands in stark contrast to persons identified as having been trafficked who, under national and international laws, are entitled, at least in theory, to a raft of rights related to assistance, compensation, protection from criminalization and safe return.

In seeking to develop a new approach to migration, it will be important that we uphold the existing legal distinction between migrant smuggling and trafficking in persons. This distinction is real, it makes sense, it allows us to develop targeted responses that have the best chance of working.

But it is equally important that we recognize real-world complexity. That we work to ensure the distinction between smuggling and trafficking is not cynically manipulated to avoid rights and obligations. That we remain true to what must be the only possible goal: of working together **to fight exploitation in migration**.

I conclude, Madame Chairperson, ladies and gentlemen, by pointing out that Human exploitation is **not an aberration**.

Our globalized world, which embraces the free movement of goods, capital and services but resists the free movement of people; which creates and sustains an insatiable demand for cheap labor while restricting its capacity to be delivered legally, ensures a well-stocked pond from which traffickers—and indeed smugglers—can easily fish.

And this situation has created strong incentives to maintain the status quo. We can be certain that global wealth and productivity would be under threat if exploitation were suddenly removed.

This is the real stumbling block; the one that helps explain a few stark and unsettling anomalies:

- Why we ignore the role that labour migration, weighted heavily in favour of developed economies and big business, plays in fuelling vulnerability to exploitation;
- Why governments are so willing to pass strong laws but unwilling – or unable - to implement them effectively;
- Why supply chain transparency is on the table, why this issue of currently dominating every debate on discussion on trafficking - but not **deep corporate complicity in exploitation** - and the **corruption** that makes this possible;
- And why the **decent work agenda**, supported, in principle, by everyone, has gained so little traction in the real world.

A solution to trafficking is indeed within our grasp. But the task of openly and honestly addressing human exploitation is not for the faint-hearted.

The ideas we are engaging with: human rights, the rule of law; equality between men and women, universal justice, are still new - they are still fragile. They fly in the face of human history and human experience, which has always accepted the domination of the strong over the weak - the rich over the poor.

A solution to trafficking will require much more of us, not least a commitment to being in this for the long haul – and a willingness to question even the most comforting of our assumptions.

Thank you.