Statement to the opening plenary by Craig Mokhiber,
Office of the High Commissioner for Human Rights

Secretary-General Sekimizu, Excellencies, dear colleagues, ladies and gentlemen,

Let me thanks the International Maritime Organization, and you, Mr. Secretary-General, for this important and timely initiative.

The issue of migration by sea raises pressing, vital, and sometimes heart-wrenching questions.

Questions of safe passage, of free movement, of protection, and of dignified treatment.

Questions, indeed, of life and death.

Questions, therefore, of human rights.

I want to suggest today that the gravity of these questions – and the cost of getting the answers wrong-- imposes an obligation on all of us to think critically, to learn the hard lessons of the past, to resist certain pressures-- political and otherwise-- and to challenge some of the assumptions that have underpinned much of the response of the international community to this issue thus far.

And I want to propose, as well, that, in our quest for solutions today, we join our voices in rejection of the all-too-common, and all-too-destructive building blocks of migration policy in countries around the world—those of prejudice and fear, of walls and prisons, of stereotypes and chauvinistic politics, of “us and them.”

Instead, colleagues, let us look for solutions built on the two pillars of successful policy:

• First, our values – values codified in international human rights law, humanitarian law, refugee law, and the law of the sea.

• And second, evidence, facts, data, and the reality of the world in which we live.

But it won’t be easy. Today, in the field of migration policy, the faulty assumptions are myriad. And they are all-too-often embraced as common wisdom.

One such assumption is that if only the walls are built high enough, or the sea crossing made difficult enough, or enough smugglers locked away or put out of business, then migrants will stop trying to move.

Another is the assumption that rescue at sea constitutes a “pull factor” for irregular migration, and that if we stop rescuing them, migrants will stop taking to the seas.
Still another is that the “push factors” of migration – whether deprivation, or repression, or discrimination, or conflict, are accidents of fortune, and not the business of the receiving countries of Europe, or America, or Australia.

Neither, in knee-jerk resort to solutions centred on enforcement measures, should we accept the false assumption that migrants are terrorists and security threats, or, for that matter, that all smugglers are organised criminals.

Or the faulty assumption that there currently exist enough regular channels for ‘law-abiding migrants’ to be able to take up jobs or reunite with their families in an orderly queue.

And, finally, the assumption that, in the sovereign exercise of authority over their own borders, States are unconstrained in the measures that they can adopt to secure those borders—without regard for their international legal obligations.

Ladies and gentlemen, there is a deceptive and dangerous logic at work in these assumptions.

If we seek solutions that are effective, humane, and sustainable, they cannot be constructed on these shaky pillars.

It should by now be seen as axiomatic that no one who has food to eat, who is safe from torture, and rape, and from falling bombs, who has security for his family, education for his children, freedom, and hope—no one who has dignity at home— or safe and legal channels of migration abroad --- feels the so-called “pull” of risky boats, uncertain access, and the meagre existence of a fleeing migrant.

So let us be clear today: the often-perilous movement of migrants across the sea that we are seeing today is rarely entirely ‘voluntary’, in the true sense of that term.

We know that the complex reality of contemporary mobility includes a long continuum of forced migration narratives, whether compelled by persecution, conflict, discrimination, entrenched poverty, environmental degradation, or lack of access to decent work, to adequate healthcare, education or housing.

In other words, human rights violations form the backdrop of these desperate sea voyages, for refugees and non-refugees alike.

Stay home in trembling fear or in gnawing want, or head for inhospitable seas, and often inhospitable shores.

The seafarers in the room will recognize the true nature of this dilemma from their own mythic traditions. This is a modern-day Scylla and Charibdis, and, with legal migration channels increasingly restricted, there is often no middle route.

Ladies and gentlemen,

Migration policy must not be built on misperception, prejudice, and fear. Rather, it must be evidence-based and values-based.
And even though we do not have as much data on migration and migrants as we need—and this too should be remedied, we do know that, currently, there are simply not enough regular and legal channels for the movement of migrants.

Instead we are seeing increased restrictions on regular migration channels, particularly for low-skilled or low-wage workers, as well for family reunification.

Refugees, too, are often unable to access fair and effective asylum channels.

And there is evidence that it is precisely this lack of regular channels, coupled with harsh controls at external borders that have led migrants to turn to the services of smugglers or even to fall prey to traffickers.

Indeed, we are now seeing a proliferation of these actors.

Thus, ill-conceived border control measures have themselves contributed to the drawing in of highly organised and sometimes ruthless smuggling and trafficking networks, attracted by the profits that can be made in evading these controls.

We also know that harsh measures taken to prevent movement do not generally deter migration.

There is no empirical evidence, for example, that detention deters irregular migration or discourages people from seeking asylum.

On the other hand, we do know that the criminalization of irregular migration leads to unnecessary detention, heightens the vulnerability of migrants, and opens the door to a wide range of human rights abuses.

And the evidence shows that most migrants moving across the seas do not represent a security threat to any nation.

And this we know with absolute certainty: all migrants, regardless of their legal status, how they arrive at sea borders, where they started their journey, or their race, religion or nationality, are entitled to enjoy their human rights, in line with international law.

Ladies and gentlemen

When migrants are left to drift for weeks in the Mediterranean, the Pacific, or the Indian Ocean, where ships deliberately refuse to come to the rescue of migrants in distress, who are without access to food and water; when disproportionate force is used to intercept vessels causing injury or death, these are not just tragic incidents, they are grave human rights breaches.

And let us recognize this: there is an uncomfortable irony in demands that migrants scrupulously respect the rules, when State action in this realm often does not.
The starting point of lawful migration policy is the guidance provided by international human rights law and standards as set out in the core human rights treaties, and in the complementary standards of international humanitarian law, refugee law, and the law of the sea.

International law requires the rescue of migrants in distress at sea, and their timely disembarkation in conditions of safety and dignity.

On arrival, every individual regardless of status has the right to individual determination of her or his situation.

No-one should be subjected to prolonged or arbitrary detention, discriminatory or arbitrary decision-making, unlawful profiling, or disproportionate interference with the right to privacy.

The prohibition on *refoulement* must be scrupulously upheld for everyone.

And specific attention must be paid to migrants who are at particular risk such as children, pregnant women, persons with disabilities, older persons and victims of torture, violence or trauma.

Excellencies,

International borders are not zones of exclusion or exception for human rights obligations and policies aimed not at governing migration but at curtailing it at any cost, serve only to exacerbate risks posed to migrants and to create zones of lawlessness and impunity.

Sovereignty is not a shield at borders. Rather it is a mandate to protect every human being who finds herself there. Thus, States are entitled to exercise jurisdiction at their international sea borders, but they must do so, without exception, in full conformity with their human rights obligations.

And there is another value to constructing human rights-based approaches to migration: such approaches shine a light on the human rights impact of policy measures, whether intended or not. In this sense, they form part of the due diligence responsibilities of States and State actors.

For example, amidst growing attention to the actions of smugglers, and the rush to harsher enforcement measures, less attention has been paid to the human rights impact of counter-smuggling measures and of the criminalisation of migration.

Such impacts can range from unlawful detention and interception of migrants to disproportionate penalties on smugglers or the criminalisation of people who are assisting migrants for humanitarian reasons.

It simply makes no sense to lump all so-called ‘smugglers’ together in an amorphous mass of criminality. Indeed, from the perspective of protecting human rights, some of these activities
are essentially a service of moving people from the dangers of point A, to the relative safety of point B.

To equate a caring neighbour with a boat, on the one hand, with an organized criminal syndicate on the other, is hardly the kind of analysis that is likely to yield effective and humane policies.

As we have learned from other policy areas, from responding to the illicit drug trade, to countering terrorism, to the fight against trafficking, a disproportionate and overly-narrow focus on enforcement, without due attention to the complexity of the issue, its causes, and the humanity of its actors, will not lead to solutions.

Rather, as history has shown, it is likely to lead to more problems.

Properly understood, the solution is not to be found in measures to prevent movement or migration at all.

Indeed, migration is not a problem to be solved.

Rather, it is a normal and inevitable feature of the human experience. Human beings have always and will always move in search of opportunities for a better life.

But if we truly hope to end precarious and unsafe migration then we must also address the root causes and “push factors” of such movement.

We must address the forced displacement of migrants and refugees from countries affected by conflict, poverty and environmental degradation, and acknowledge the international and third-country actions and policies that contribute to these situations.

And we should not shy away from naming them: human induced climate change, the arms trade, unfair development and trade policies, corruption, aggression, foreign occupation, terrorism, uncontrolled infectious disease, policies that underwrite gross inequalities within and between countries-- None of these is entirely homegrown. And no country—sending or receiving – can wash its hands of their causes or consequences.

If we want to reduce desperate and risky migration, we might do well to look first to these root causes—these ‘push factors’—and how the policies of other countries, individually and collectively, contribute to them.

Of course, at the same time, a robust and adequately resourced search and rescue infrastructure must be put in place in all maritime environments where such precarious migration is taking place.

And sufficient regular channels must be set up for those who are moving in search of employment, family unity and asylum.

Mr. Secretary-General, ladies and gentlemen, we know that these are not easy questions. Indeed, the political, economic, social, and legal challenges are many and daunting.
For our part, the Office of the High Commissioner for Human Rights has drawn up a set of *Recommended Principles and Guidelines on Human Rights at International Borders*, to provide practical assistance to States in this complex policy domain.

These Guidelines set out a range of related measures, such as resourcing and training border guards, investigating and prosecuting corruption, extortion, and exploitation by border personnel and private actors, and asking States to compensate private vessels that rescue migrants at sea and ensure that shipmasters who rescue migrants are not penalised or criminalised for doing so.

But responding effectively to the challenges and dilemmas raised by irregular maritime migration will first require political will, joined up policy thinking, and a willingness to challenge deeply held but flawed assumptions about migration— and about migrants.

Most importantly, it will require that we acknowledge that this desperate movement of human beings requires policy responses that are rooted both in evidence of the real world in which we live, and in the human rights norms and standards that define the world to which we aspire.

Thank you.