

GENERAL ASSEMBLY

Migration discussion highlights disconnect with human rights framework



On 19 May 2011, the President of the General Assembly hosted an Informal Thematic Debate on International Migration and Development (the Debate).¹ The Debate was intended to build on the ongoing dialogue on the issue and contribute to the process leading to the second General Assembly High-level Dialogue on International Migration and Development in 2013. It brought together Member States, United Nations (UN) agencies, observers, the private sector and numerous non-governmental organisations (NGOs) to consider achievements to date and best practices for promoting migration's positive contributions to development. The Debate was framed in two interactive panel discussions: the first on the contribution of migrants to development; the second on improving international cooperation on migration and development.

Many participants at the first High-level Dialogue in 2006 considered that the UN is the natural venue in which to continue the global conversation on international migration and development. However, in the end, States favoured the creation of the Global Forum on Migration and Development (GFMD) – an informal, voluntary, State-led process outside the UN² that would not produce negotiated outcomes or normative decisions.³ The relationship between the GFMD and UN continues to be the subject of some discussion and a number of States and civil society representatives at the Debate broached the issue of whether the dialogue should return to the UN. This issue is of great importance to civil society actors who have faced greater constraints to effective cooperation with governments in the framework of the GFMD. In this regard, the civil society representative for the 2011 GFMD⁴ called for the 2012 assessment of the GFMD to examine civil society engagement and the value added of a more inclusive framework for stakeholder participation and cooperation.

Morocco noted that it is time for the process to mature and achieve a more appropriate, formal nature. Others, including El Salvador and Argentina stated their positions that the UN is the appropriate forum for discussions on migration and development. Citing the purposes of the UN in Article 1 of the UN Charter, Mexico argued that the GFMD cannot replace the role of the UN to harmonise the actions of nations on this issue.

Others, including Sweden and the EU, affirmed their support for a continued State-owned, open-ended, consultative and non-decision-making process in the GFMD. The US seemed to indicate that its cooperation was contingent on the dialogue remaining outside the UN, attributing the effectiveness of the current process to its non-binding, informal, voluntary nature.

1 See <http://bit.ly/f7OX4S>. The General Assembly decided in RES/63/225 (para. 17) to convene a one-day Informal Thematic Debate on International Migration and Development at its sixty-fifth session in 2011.

2 A number of ad-hoc mechanisms and institutions on migration have proliferated across the UN in the absence of a comprehensive multilateral regime on migration, or a single agency with a comprehensive mandate. Though a complete review is beyond the scope of this article, these include the Special Rapporteur on the Rights of Migrants, the *Convention on the Rights of Migrant Workers and their Families* and the Committee on Migrant Workers, a number of ILO Conventions regarding the labour rights of migrants, the Special Representative of the Secretary General on Migration and Development, and the Global Migration Group (an inter-agency group composed of 16 agencies that deal with aspects of migration). The Human Rights Commission, Human Rights Council and General Assembly have addressed the issue of migration in past resolutions. A helpful consolidation of resolutions and reports in the General Assembly from 1999 onward is available at <http://bit.ly/mjZ4kZ>. In addition, OHCHR prioritised the protection of human rights in the context of migration as a thematic area in its 2010-2011 Strategic Management Plan, available at <http://bit.ly/9J1Z8i>.

3 Note by the President of the General Assembly on the Summary of the High-level Dialogue on International Migration and Development, General Assembly, 61st Session, A/61/515 (13 October 2006).

4 John Bingham, Head of Policy, International Catholic Migration Commission.

The Philippines articulated its position that the UN is the ideal venue. However, recognising the sensitivity of the issue for many States, the Philippines considered that a 'realistic' approach would be to maintain bilateral and regional dialogues parallel to discussions at the UN so that those on the ground benefit from improved policies in the meantime.

The Secretary-General's Special Representative on International Migration and Development, Sir Peter Sutherland, highlighted another shortcoming of the voluntary nature of the GFMD in his remarks, noting the reluctance of Member States to provide stable funding to the process and their lack of willingness to host future meetings. He also criticised States for the lack of practical cooperation achieved through the GFMD; the 'yawning chasm' between the scale of the problems and the opportunities presented by migration and the size of the efforts made to address the challenges.

In addition to more effective cooperation with governments, civil society has long argued that multilateral cooperation within the UN would ensure that migration is considered within the already established normative framework. This in turn would lead to more effective protection of migrants' rights. Algeria also linked the two issues, stating that global policy coherence can only be achieved through debate within the UN and the ratification and implementation of relevant conventions, in particular the *Convention on the Rights of Migrant Workers and Members of their Families* (the Convention).

Amidst rhetoric from most States at the Debate that a human rights based approach to migration is appropriate, civil society representatives voiced their concern at the lack of attention and focus on the Convention. This view was echoed by certain States, including Morocco, which noted the apparent contradiction between the calls for greater respect of migrants' rights and the position of the majority of States vis-à-vis the Convention.

Since its adoption by the General Assembly on 18 December 1990, the Convention has been ratified by 44 States and signed by a further 31. To date, none of the major labour receiving States in the Western hemisphere, nor other significant receiving States such as the Arab States of the Persian Gulf and India, have ratified the Convention.

During their Universal Period Reviews at the Human Rights Council,⁵ these States attempted to justify their refusal to ratify with specious arguments. These arguments included that the Convention contradicts other international obligations;⁶ that ratification is not required to achieve protection of rights as these are already adequately protected by legislation and/or existing human rights commitments;⁷ that the Convention

does not draw any distinction between 'regular' and 'irregular' migrants⁸ and the lack of distinction does not 'encourage' legal residence;⁹ that the Convention is not compatible with domestic legislation, in particular with regard to 'extra rights' given to 'illegal' migrants;¹⁰ that the situation of migrant workers is much better than the non-ratification might suggest.¹¹ In addition, some European States argued that ratification is precluded by the fact that competence on matters relating to migrant workers lies with the European Community.¹²

The General Assembly will consider the future of multilateral cooperation at the second High-level Dialogue on International Migration and Development in 2013. In the meantime, the current Chair of the GFMD (Switzerland) has invited States to express their views on whether the dialogue should continue in the GFMD through a questionnaire sent to capitals. ■

5 For documentation associated with the Universal Periodic Review, see <http://bit.ly/m8PFEa>.

6 Austria para. 60, A/HRC/17/8, available at <http://bit.ly/oQwBGc>.

7 Lichtenstein A/HRC/10/77/Add.1, Austria para. 60, A/HRC/17/8,

Norway A/HRC/13/5/Add.1, UK paras. 62-63, A/HRC/8/25/Add.1, Finland para. 33 A/HRC/8/24, New Zealand para. 2, A/HRC/12/8/Add.1, Switzerland para. 64, A/HRC/15/11. Available at <http://bit.ly/11ELfu>.

8 Italy A/HRC/14/4/Add.1, the Netherlands para. 10, A/HRC/8/31/Add.1*. Available at <http://bit.ly/11ELfu>.

9 France para. 5, A/HRC/8/47/Add.1, para. 13, A/HRC/WG.6/2/FRA/1. Available at <http://bit.ly/11ELfu>.

10 Switzerland para. 34, A/HRC/8/41, available at <http://bit.ly/pLBQU4>.

11 Lichtenstein para. 43, A/HRC/10/77, available at <http://bit.ly/pZUOUU>.

12 Luxembourg para. 2, A/HRC/10/72/Add.1, Italy A/HRC/14/4/Add.1. Available at <http://bit.ly/11ELfu>.