MIGRANT WORKERS
AND HUMAN RIGHTS
A UN perspective

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Nafplion, 2 September 2003

Human Rights Training organized by the
HUMAN RIGHTS DEFENCE CENTRE
For participants from Southeastern Europe

“Migration is a positive phenomenon that must be valued for the economic contribution, the
cultural diversity and the richness of exchanges that it produces. Migration must also take place
in a context of dignity and respect. For this to be possible a new concept of migration
management with human rights as an integral part must be pursued. Migration management is
in fact an extremely complex series of processes, which go well beyond unilateral punitive
measures and control. States, international and regional organizations, financial institutions,
NGOs, the private sector and the civil society at large have a shared responsibility in this
regard”

Excerpt from the Message of the Special Rapporteur on the human
rights of migrants, Ms. Gabriela Rodriguez Pizzaro, on the Third
International Migrants Day, 18 December

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represent those of the United Nations.
INTRODUCTION

The number of people living outside their countries of birth or citizenship has more than doubled in the past thirty-five years. During the past decade, the number of international migrants grew at about 1.3 per cent per year, and migrants currently comprise about 3 per cent of the world population. In 2000 out of the estimated 175 million living outside their countries, about 159 million were international migrants; out of the rest, approximately 16 million were recognized as refugees fleeing a well-founded fear of persecution (comprising 9 per cent of the migrant population); and 900,000 asylum seekers. International migrants are not distributed evenly across the globe, most (60 per cent) live in developed regions and only 1.5 per cent of the population in the less developed regions. A figure that makes this reality more acute is that minors make up a large percentage of migrants. For example 33% of the overall number of new arrivals of irregular migrants in Italy in 2000 were minors and the number of unaccompanied minors in Germany the same year was estimated at 10,000.

For the world as a whole, the level of recorded remittances from migrants rose from $46 billion in 1990 to $62 billion in 2000, a figure that is generally viewed as being an underestimate (by as much as 40 per cent) of the actual total of close to $100 billion per year.

The numbers of migrants are bigger than ever before in recorded history. In today’s world of 175 million people living outside their country and as migration flows increase, the need for a new human rights protection regime for migrants becomes more urgent, in Europe and around the world.

Over the past decade the number of governments adopting new measures to influence migration has grown rapidly. However, these measures do not reflect the likelihood of an increasing economic demand for migrants, despite the birth-rate crisis in developed countries. Instead, as of 2001, 44 per cent of developed countries and 39 per cent of developing countries are implementing policies aiming at lowering migration. There is thus a growing discrepancy between the expected increase of the need for migrant labour in developed countries and public policies for achieving a fair and effective integration of immigrants into the societies that will need their labour.

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3 The statistics mentioned in this paper are taken from an unpublished paper of the UN Secretariat, which quotes from sources of the UN Department of Economic and Social Affairs (DESA) and the World Bank.
In the meantime, hardly a day goes by without media reports about tragic stories involving migrants. Just on Sunday, 29 June, I was reading an article in the New York Times, with the title “Deaths of Immigrants Uncover Makeshift World of Smuggling”: it was about the endeatmment of Karla Patricia Chavez, a smuggler of Honduran origin; Chavez was the ringleader of an operation that went disastrously wrong when 19 undocumented immigrants died from the oppressive heat in a truck ferrying them through South Texas; Chavez packed too many immigrants—at least 77—into a tractor-trailer that had neither water nor ventilation, for a 325-mile journey in scorching desert heat. In the June 2003 publication of the Southern Poverty Law Center, I read about a vigilant group in south Texas that conduct violent paramilitary activity against peaceful migrants in an active conspiracy with ranchers who pay for their activities. Daily the UN receives such information about migrants falling victim to transnational trafficking and smuggling by organized criminal networks, xenophobic attacks by extremist groups, racial profiling, arbitrary detention, ill-treatment and exploitation, racism and racial discrimination, exclusion, desperate labour conditions and overall violence. Human rights are at the heart of the question of migration: very often lack of peace and democracy, flagrant inequalities, extreme poverty and disrespect of human rights, including economic, social and cultural rights, lead people to migrate. Vulnerability is the common condition of the overwhelming majority of migrants. The richer receiving countries have often responded to this new wave of human migration by closing their doors. As the UN was preparing the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, Mary Robinson, the former High Commissioner for Human Rights, spoke of the “fortress Europe” where the migrants are left outside to starve and die.

While globalization makes massive migration inevitable, other phænomena attempt to counter this wave. One of those is certainly the desire of the developed world to guard jealously the benefits it has been enjoying from an unjust international economic order over the decades. Xenophobia is a symptom of this as well. In order to give an even broader perspective, one should also see this xenophobic reaction to migration within the context of the rise in identity politics within states as well as internationally after the end of the Cold War: the result is again resistance to the “other”, the “foreign”.

Cultural tensions have been exacerbated after the tragic events of September 11th. From the varied reactions that followed in societies both of developing countries and of developed countries it became clear that despite all else that unites a “globalized” world, in reality there is in many senses a communication dead end at the level of the masses, one that is not only sustained by the poverty divide, but is also often fueled by religious fundamentalism and exploited by political opportunism. Again, xenophobia and discrimination against migrants result from these phænomena as well.

This paper is divided in four parts. Part I presents an overview of the existing extensive international legal standards and norms regarding the human rights of migrants, including a brief

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critique of same. Part II is an account of monitoring mechanisms and policy initiatives in the United Nations. Part III refers to increasing tendencies in international practice to merge the concept of “migrants” and of “minorities”. Finally, Part VI contains some conclusions on the status of the issue of migrants in international affairs today and a number of recommendations for initiatives in Europe that could be useful at this stage.
I. INTERNATIONAL LEGAL STANDARDS AND NORMS

a. Global and regional international human rights standards

International human rights instruments provide the migrant with a minimum protection in at least three respects: the right to leave any country, and to return to one’s own country; the right to non-discrimination in the enjoyment of basic rights and fundamental freedoms; and specific protection in the form of family reunification.

The right to leave any country, including one’s own, and the right to return to one’s own country is included in article 13 (2) of the Universal Declaration of Human Rights of 1948, as well as in article 12 (2) and (4) of the International Covenant on Civil and Political Rights of 1966, article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, article 10(2) of the 1989 Convention on the Rights of the Child, and article 6 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.


The right of the migrant not to be discriminated against in the enjoyment of human rights, once admitted into a country, is guaranteed under article 2(1) of the International Covenant on Civil and Political Rights, article 6 of the International Covenant on Economic, Social and Cultural Rights, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, and article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women.

The right to family reunification is guaranteed in article 10 of the Convention on the Rights of the Child, which is the most widely ratified global human rights treaty. This right is also found in the International Covenant on Civil and Political Rights and the 1949 Geneva Conventions and their Additional Protocols. Regional instruments, especially the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, address the protection of the family.

b. International legal standards specifically addressing migrants

b.i. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

In the mid-1970s, a story similar to the one I recounted above prompted the Sub-Commission on Prevention of Discrimination and Protection of Minorities to launch a study on the human rights problems faced by migrant workers: it was the news of the tragic
death in a ship of dozens of Africans aspiring to migrate to France. After the study was completed by the Moroccan Expert Halima Warzazi, the General Assembly decided to prepare a Convention on the Rights of Migrant Workers and Members of Their Families. It took from 1980 to 1990, to complete the Convention, which was finally adopted by the General Assembly on 18 December 1990, by resolution 45/158. It is often quoted as the Migrant Workers Convention.

Protagonists of this treaty were the Mexicans, who also chaired the Working Group of the General Assembly that was drafting the Convention. The tension during the years of the drafting was between sending and receiving states, with Mexico, Morocco, the Philippines and others on one side of the spectrum and the USA, France, the UK and Germany on the other. Finland and Greece played a constructive role, mediating differences and organizing inter-sessional encounters to facilitate dialogue. Greece, in particular, was indicating its position as both a sending and a receiving state at that time. The drafting process was arduous. The USA and some Europeans, especially France and Germany, were using, as part of their arguments against the Convention, that the International Labour Organisation had developed international standards in this area and that there were also European standards, thus making a UN treaty unnecessary. Interestingly and sadly, there were no NGOs observing the drafting process, unlike in other cases of drafting of human rights instruments. The only exception was the Quakers who sent an observer for some time. It is well known that the presence of NGOs makes a difference as it brings the perspective and the pressure of civil society into an inter-governmental process.

An important part of the discussion was on the definition of the term “migrant worker”. The Convention explicitly covers, without discrimination, all persons who are or have been engaged in remunerated activity in a state in which he or she is not a national, and members of their families. Its temporal scope encompasses the entire migration process, from the early days of preparation, through departure, transit, the entire period of stay, and through to the return home. The Convention also protects the full range of categories of migrant workers—explicitly addressing:

- frontier workers
- seasonal workers
- seafarers
- off-shore installation workers
- itinerant workers
- project-tied workers
- specific employment workers
- self-employed workers
- and, importantly, members of their families.

Significant thinking was also given to the term “illegal migrant” that the Working Group considered a very inappropriate term in a human rights treaty, prone to creating further prejudice and discrimination. The term that was finally retained throughout the Convention is “documented and undocumented migrants”. Unfortunately, as is known, people, including public officials, still use the term “illegal migrants”, which
carries with it an insinuation of moral disapproval.

The unique point of the Convention is that it addresses the phenomenon of migration holistically and approaches migrants and their families as human beings, not only as economic entities. It contains two parts: the first applies to all migrants, whether they are documented or not, and contains a re-affirmation and clarification of universal standards of treatment of human beings, e.g. prohibition of torture, fair trial etc. The second part contains a series of rights for those migrants who are documented. The underlying philosophy of the Convention is to encourage documented migration and to protect migrants from exploitation, especially to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and to discourage their employment in an irregular or undocumented situation.

How does the Convention protect migrant workers:

- by taking a comprehensive, holistic approach
- reaffirming the full range of civil, cultural, economic, political and social rights
- clearly articulating labour rights
- emphasizing non-discrimination and equality of treatment with nationals
- specifying a number of migrant specific provisions
- elaborating controls on those who would exploit or abuse migrants workers, their families or their labour
- requiring that information should be provided in the language, culture, legal, social and political structures of the destination state, as well as on the obligations and applicable rules and procedures
- protecting against violence, injury, threats, racism and intimidation by both public and private actors
- guaranteeing contact with consular officials when protected persons find themselves in trouble
- mandating that they not be treated as criminals unless convicted of a crime
- protecting their identity documents and permits
- prohibiting collective expulsions and requiring due process guarantees in all expulsion cases
- securing the right of such workers to transfer their benefits home to their families
- requiring measures to address irregular and clandestine migration.

The Convention’s supervisory mechanism is two-fold. It provides for the establishment of an expert committee to monitor its implementation through a reporting and review process. It also provides for an optional individual complaints procedure, for states that make the declaration under article 77 of the Convention. In other words, beyond just being seen as economic entities or commodities, migrants, through the Convention, are seen as human beings with human rights and dignity.
It has taken 12 years for 22 states to ratify the Convention, thus opening the way for its entry into force in 2003. The Convention entered into force on 1 July 2003. The countries that have ratified the Convention are: Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Timor Leste, Uganda, Uruguay. Ten other countries have signed but not yet ratified the Convention. No Western receiving country has ratified the treaty so far and this is regrettable. Of the European countries, only Bosnia & Herzegovina has ratified the Convention. 5

In December 2003 there will be a conference of States parties to the Convention on the Rights of Migrant Workers to elect the members of the Committee that will monitor the implementation of the Convention by governments.

b.ii Standards of the International Labour Organisation

The ILO Migration for Employment Convention (No. 97), 1949, and the Convention on Migrant Workers (Supplementary Provisions), (No.143),1975, apply mainly to regulated migrants. They regulate the conditions of work of migrants lawfully residing in the country of immigration, and provide for treatment not less favourable than that applicable to nationals regarding terms and conditions of employment, membership of trade unions, accommodation and social security, guarantees of security of employment, relief work and retraining. Convention No. 143 also establishes an international obligation to cooperate in suppressing clandestine movement of migrants for employment and illegal employment of migrants. The scope of these treaties is limited by comparison to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

b.iii Other international standards

The recently adopted Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime of 2000 establishes a legal framework for States’ cooperation in preventing and combating the smuggling of migrants. It criminalizes the smuggling of migrants, and establishes the obligation to investigate and prosecute the offenders and anyone who organizes or facilitates such irregular immigration. The Protocol considers the smuggled migrant as the victim of the crime and thus not liable to criminal prosecution, and provides for his or her eventual return to the State of origin, whether of nationality or permanent residence. The

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5 There was a concerted campaign for the ratification of the Convention in recent years, with the involvement of UN agencies, the Special Rapporteur on the Human Rights of Migrants, Gabriela Rodriguez, NGOs, and civil society at large, including religious communities.
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, contains provisions to prevent and combat trafficking, to protect and assist victims, and to promote inter-agency and inter-country cooperation, as well as to address criminal justice aspects, including specific control measures (criminal offences, forfeiture of proceeds of crime, extradition and investigative cooperation). But neither the anti-Smuggling nor the anti-Trafficking Protocol is yet in force. They have, however, received a large number of signatures, indicating States political will to cooperate in combating the smuggling of migrants and human trafficking.

c. **International norms stemming from global conferences**

Three global conferences of the decade of the 1990s dealt with migrants. Out of the three, the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance provides the most extensive human rights agenda for migrants.

The Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights urged all States to guarantee the protection of the human rights of all migrant workers and members of their families and to consider signing or ratifying the Migrant Workers Convention.6

The Cairo Programme of Action7, adopted at the 1994 International Conference on Population and Development is a comprehensive set of aspirations with regard to migrants agreed to by the international community by consensus. Governments have agreed that they will promote their own constructive action in four broad areas, of which I will highlight a few points:

In the area of international migration and development:

- make every effort, in all fields, to secure the option of remaining in one’s own country;8
- facilitate temporary migration by bilateral or multilateral agreements as a means to match the international supply and demand for labour, and making sure to safeguard the wages and conditions of migrants and native workers;
- assist returning migrants with re-integration, and by transferring pensions and work benefits back to the migrant in his/her country of origin;
- exchange information and support the gathering of data to monitor international migration; strengthen the role of international organizations with mandates in

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7. For the full text, see www.un.org, go to “search” type the name of the Cairo Declaration on Population and Development.
8. Underlying various provisions of the Cairo Declaration was a wish or call to potential migrants to stay in their own countries.
the area of migration to deliver technical support, advise in management of international migration flows and promote cooperation.

**Regarding documented migrants:**
- receiving countries should extend treatment equal to that of nationals to documented migrants and their families (on human rights, including freedom of religion, working conditions, social security, access to social services and the legal system, without discrimination);
- promote integration by giving migrants civil and political rights, and facilitating their naturalization, in particular, of children of long-term migrants, by providing education and training;
- recognize the vital importance of family reunification, and integrate it within national legislation;
- do not discriminate on the basis of race, religion, sex or disability when admitting migrants, combat intolerance and generate public sensitivity.

**Regarding undocumented migrants**
- safeguard both the prerogative of the State to determine who can enter and stay in their territory and the basic rights of migrants to seek asylum and not be exploited; reduce undocumented migration by adopting effective sanctions against the organizers of undocumented migration and traffickers of women and children;
- receiving countries should reduce undocumented migration by raising awareness of potential migrants of the legal conditions for entry, stay and work;
- governments of origin of undocumented workers must accept the return and reintegration of those persons, and should not penalize them when they return. Solutions to problems of undocumented migration should be pursued through multilateral negotiations that protect basic human rights.

**Regarding refugees, asylum seekers and displaced persons**
- address root causes by promoting security, respecting human rights, fostering peaceful settlement of disputes, alleviating poverty and preventing environmental degradation;
- participate in international assistance and burden sharing through enhanced regional and international mechanisms for protecting and assisting refugees, especially women and children;
- create conditions for voluntary repatriation, link assistance to reconstruction and development;
- respect international law on refugees, especially the principle of non-refoulement.

The Durban World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance that took place in 2001, recognized that xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices. The
Conference asked States to undertake concrete measures to combat this through the promotion of human rights, information campaigns, facilitating family reunification and ensuring the full equality of all before the law. The Durban Plan of Action gives a human rights framework for public policies regarding migrants, many of which resonate the Migrant Workers Convention. Highlights of the Durban Declaration include the following:9

- an invitation to international and national non-governmental organizations to include monitoring and protection of the human rights of migrants in their programmes and activities and to sensitize Governments and increase public awareness in all States about the need to prevent racist acts and manifestations of discrimination, xenophobia and related intolerance against migrants;
- encouragement to States to promote education on the human rights of migrants and to engage in information campaigns to ensure that the public receives accurate information about migrants and migration issues, including the positive contribution of migrants to the host society and the vulnerability of migrants, particularly those who are in an irregular situation;
- a call to States to facilitate family reunification in an expeditious and effective manner which has a positive effect on integration of migrants;

States were urged to:

- take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants, and ensure the full equality of all before the law;
- to develop and implement policies and action plans to foster greater harmony and tolerance between migrants and host societies;
- to implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate that facilitate their integration into social, cultural, political and economic life;
- to ensure that migrants, regardless of their immigration status, detained by public authorities are treated with humanity and in a fair manner and receive effective legal protection and, where appropriate, the assistance of a competent interpreter in accordance with the relevant norms of international law and human rights standards, particularly during interrogation;
- to ensure that the police and immigration authorities treat migrants in a dignified and non-discriminatory manner, through organizing specialized training courses for administrators, police officers and other interested groups;
- to take all possible measures to promote the full enjoyment by all migrants of all human rights, including those related to fair wages and equal remuneration for work of equal value without distinction of any kind, and to the right to security in the vent of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control, social security,
including social insurance, access to education, health care, social services and respect for their cultural identity;

- to place special focus on gender issues, including gender discrimination, particularly when the multiple barriers faced by migrant women intersect;
- to recognize the same economic opportunities and responsibilities to documented long-term migrants as to other members of society.

d. A critique of existing standards and norms

It is clear from the above overview that both international legal standards on migrants and policies have been enunciated at the international level. However, unlike the legal regime that covers refugees, the international legal standards specific to migrants suffer from lack of wide ratification by States. Even the broad consensus at the Cairo Conference or at the Durban Conference cannot be considered as law, but rather as a broad expression of aspirations.

In addition, it continues to be the sovereign prerogative of States to determine, within the limitations of international law, the terms and conditions of admission of non-nationals into their territory. In other words, under current international law, the right to leave one’s own country—a fundamental right for the migrant worker— is an incomplete right, since it does not include a corresponding right to be admitted into any country, other than one's own.

Family reunification also raises various legal questions not addressed by existing norms. Family reunification accounts for the great bulk of immigration: about 60% in the European Union, and 75 to 80% in the USA.10

While the right to family life is clearly stated, there is little clarity in human rights instruments about how and where to give effect to the right to family reunification for those families separated by international borders. Many States have moved to restrict the implementation of family reunification through administrative measures, strict interpretation of law, and/or changes in national law. The positive role of family reunification in facilitating migrant integration has not been given the policy weight it deserves, resulting in violations of the right to family reunification.

Another weakness is the lack of a lead United Nations agency on this issue, especially one with a protection mandate, like that of the Office of the High Commissioner for Refugees.11

From the recent monitoring of migrants human rights that the UN has been conducting, which I will discuss below, one notes a tremendous challenge for each State and each

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10 Supra 3.
11 There are consultations currently at the United Nations about the possible establishment of an international independent commission on migration, which would discuss the institutional gap and other matters on migration.
The 2003 report of the Special Rapporteur of the Commission on Human Rights on this subject is shocking and reveals a shameful picture for many States.

II. MONITORING AND POLICY ACTIONS BY VARIOUS PARTS OF THE UNITED NATIONS
The Commission on Human Rights

The Commission on Human Rights has added an item on its agenda on “Specific Groups and Individuals: Migrant Workers”. The Commission explicitly recognizes migrants as a vulnerable group of people due to the fragility of their circumstances, especially due to undocumented migration. Since 1999 the Commission has appointed a Special Rapporteur on Migrant Workers, Ms Gabriela Rodriguez Pizzaro, whose last reports may be found in documents E/CN.4/2002/94 and E/CN.4/2003/85 and addenda 1 to 4. In her report the Special Rapporteur included information from her official visits to Mexico, the border between Mexico and the USA, Canada and Philippines. The Rapporteur also addressed the connection between asylum and migration and made a series of recommendations, including on migrants in transit, migrants in detention and migrant domestic workers. The mandate of the Special Rapporteur is contained in Commission on Human Rights resolution 1999/44 of 27 April 1999, and is essentially to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of persons belonging to this vulnerable group, including obstacles to and difficulties for the return of migrants who are undocumented or in an irregular situation.

The Special Rapporteur receives individual complaints -- “communications”, as they are called in the UN—about violations of migrants’ human rights and intervenes with Governments. She receives many complaints from migrants in Europe. For example in her 2003 report she devoted some 20 pages to complaints received about Spain, about 4 pages about Germany, 9 about Greece, one about Switzerland and 2 about the UK. Complaints about another 21 countries, both developed and developing, are also reported, namely Australia, Cambodia, Costa Rica, Cuba, Dominican Republic, Ecuador, Georgia, Guatemala, Israel, Japan, Kazakhstan, Malaysia, Mexico, Myanmar, Republic of Korea, Saudi Arabia, Singapore, South Africa, Thailand, United Arab Emirates and the USA. The report reflects the complaint received, the response of the government to the Special Rapporteur’s correspondence and observations by the Rapporteur. In other words, there is a dialogue, a public dialogue, taking place via the Commission on Human Rights. The Special Rapporteur is planning a formal visit to Spain in September 2003.

Most of the complaints received by the Special Rapporteur refer to the discriminatory application of domestic law and international standards. Migrants are often excluded from the labour and social legislation of the country, and are often bound to a single employer. Migrants, in particular women, may face restrictions on marrying nationals, and may be obliged to take pregnancy tests. In some countries migrants may be obliged to undergo HIV tests. Migrants have also been denied legal assistance, translation, health or
psychological services, as well as access to courts and lawyers as a result of anti-terrorist legislation. There are also worrying reports of excessive, thus illegal, use of force resulting into the death of migrants, especially in cases where they were trying to cross the border illegally.

As is to be expected governments get tense about the allegations of human rights violations they receive by the Rapporteur. The Government of the USA in particular responded that it could not release the names of detainees because of its anti-terrorism measures. The complaints are submitted by national NGOs, international NGOs and there are increasingly more cases submitted by individuals.

**Human rights treaty bodies**

Human rights treaty bodies monitor the implementation of the human rights treaties by examining periodic reports of States parties under the treaties and adopting concluding comments on the situation in each country and on measures needed to improve it. Besides the Migrant Workers Convention, particularly important is the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Eliminations of All Forms of Discrimination against Women and the Convention on the Right of the Child. The corresponding treaty bodies, besides the Committee under the Migrant Workers Convention, to established at the end of 2003, are the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Rights of the Child respectively. Considerable work has been done and vigilance exercised by the human rights treaty bodies.

For example, the Committee on Economic, Social and Cultural Rights has held that social services and access to an adequate standard of living, including adequate housing, food and clothing, may not be applied in a discriminatory manner vis-à-vis citizens and others lawfully present in the territory of the State, including asylum seekers and refugees. The Committee has consistently urged States to take measures necessary to ensure that unemployment does not disproportionately affect citizens vis-à-vis non-citizens. The Committee has also criticized legislation that provides immigration status in a discriminatory manner depending on the origin of emigration.

The Committee on the Elimination of Discrimination against Women has expressed concern for non-citizen women, including foreign women workers in domestic service, asylum-seekers and women living clandestinely in the territory of a State party.

The Committee on the Rights of the Child has expressed serious concern regarding the detention of alien children, including children seeking asylum.

**The General Assembly**
For a number of years, the General Assembly has been raising in particular the problems of women migrant workers and has been adopting resolutions recommending policies to correct and prevent such problems. This has been an initiative of the Philippines prompted by the tragic circumstances of Philippina workers in the Middle East, some of which have been given broad publicity by international media. On an annual basis, the General Assembly adopts resolutions and requests reports on migrants.

In 2001 the General Assembly decided to proclaim the 18th of December as International Day of Migrants12. The purpose of the Day is for states, intergovernmental and non-governmental organizations to disseminate information on the human rights and fundamental freedoms of migrants and on their economic, social and cultural contributions to their host and home countries, to share experiences, to adopt measures to ensure their protection and to promote greater harmony between migrants and the societies in which they live.

In his message for Migrants Day, on 18 December 2002, the Secretary-General pointed out that:

“Immigrants and refugees should not and must not be seen as a burden. Those who risk their lives and those of their families are often those with the greatest ambition to make a better life for themselves, and they are willing to work for it. They do not leave their familiar surroundings, their culture or their families for a life of dependence, crime or discrimination thousands of kilometers away. They merely want a safer, more prosperous future for their children. If they are given the chance to make the most of their abilities, on an equal basis, the vast majority of them will be assets to society.”

Office of the High Commissioner for Human Rights

OHCHR services the Special Rapporteur on Migrants and will also be servicing the Committee on Migrant Workers under the Convention on the Rights of Migrant Workers and Members of Their Families, once it is constituted later this year. At the same time OHCHR has taken initiatives on trafficking in persons and has issued guidelines on human rights and trafficking, which appeared in the 2002 report of the High Commissioner for Human Rights to the Economic and Social Council FTN?? A special initiative on trafficking is in place in OHCHR’s Office in Bosnia and Herzegovina.

OHCHR also services the human rights treaty bodies that, according to the provisions mentioned earlier, monitor governments’ behavior towards migrants13.

13 The Committee on the Elimination of All Forms of Discrimination against Women is serviced by the Division for the Advancement of Women, UNDESA.
Information about migrants appears on the website of the UN High Commissioner for Human Rights. The website address is: www.unhchr.ch.  

The Secretary-General

On an annual basis, the Secretary-General presents reports at the request of the General Assembly. In 2002 the Secretary-General presented a report, containing information from 15 states, which provided a detailed account of their legal provisions for the protection of migrants. In his recommendations the Secretary-General encouraged states to ratify the Convention as well as the UN Convention against Transnational Organized Crime and its Protocols on Trafficking and Smuggling. The Secretary-General also included details of the Special Rapporteur’s work and encouraged her to continue working for the protection of migrants, especially women and children.

Very relevant to the issue of migration is the Secretary-General’s Global Compact initiative. The Global Compact calls for companies to respect human rights, labour and environmental international principles and some 800 companies from around the world have subscribed to this initiative. It is a tool that can be strategically used in connection with migration.

V. MIGRANTS, MINORITIES AND OTHER TERMS: a changing understanding

Although the terms “migrant workers” and “minorities” have historically distinct legal definitions or understandings in International Law, whether through treaties or other international instruments, there has been a tendency recently by international human rights bodies and others to connect these terms. The consequences or potential consequences are quite important, and particularly interesting for countries of Southeastern Europe. For example, the Human Rights Committee, the expert body that monitors the implementation of the International Covenant on Civil and Political Rights, has been equating migrants to minorities in terms of the rights that the former should be enjoying, especially cultural rights. The Committee has paid particular attention to linguistic rights and the protection of sites of religious or cultural significance of immigrant communities.

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14 Go to index, then M (for Migrants). Alternatively, www.unhchr.ch - click on issues (Human Rights Issues), then M (for Migrants).
15 A/57/134
16 For example A/54/40, para 155 regarding in Japan; A/49/40, regarding migrants in Slovenia, the Korean minority
While some International Law scholars have disagreed with such interpretation by the Human Rights Committee, the reason for the Committee’s taking such a route could be sought in the non-entry into force for so long of the Convention on Migrant Workers and thus the lack of an adequate legal framework for migrant workers’ protection. Even after the Convention entered into force formally, it is unclear when any of the receiving states will ratify it, thus it should be probably expected that the Committee will continue to fill this legal vacuum where protection is most needed by using the International Covenant on Civil and Political Rights. The Covenant has been ratified by the overwhelming majority of States.

It is interesting that the Special Rapporteur follows a broad definition of migrants, broader than that of the Convention, covering, for example people who are in limbo, such as those stranded between Burma and India, people seeking asylum, crossing borders and becoming undocumented migrants. There is often a confusion between asylum seekers and undocumented migrants. The Special Rapporteur takes up all these cases, as she sees her role as one of protection of fundamental human rights.

Almost parallel to the drafting of the Migrant Workers Convention was that of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live. At that time, there was a clear distinction in the minds of States that migrant workers was a category with many more rights than merely non-citizens. Thus the Declaration of 1995 contains a much briefer enumeration of rights, only 10 articles as compared to 93 of the Migrant Workers Convention. However, what we see today is an increasing tendency not to make such distinctions, especially in the human rights area. It seems that the phenomenon of massive migration and the need for protection have led to an increased blurring of the legal distinctions.

IV. CONCLUSIONS AND RECOMMENDATIONS: possible initiatives in Europe and beyond

It is clear that these days international migration is increasingly viewed as a major phenomenon that is both unavoidable and one that has the possibility to be beneficial for both sending and receiving states. Yet, I believe that a major flaw is the gap between the economic inevitability and increasing numbers in migration and the slow, haphazard, non-comprehensive, inadequate and even negative public policies to deal with this issue fairly and effectively, including in the human rights area. Governments or societies appear in self-denial, one could say. From a global UN perspective, it is disquieting that receiving states have to-date abstained from ratifying the Convention on the Rights of Migrant Workers and Members of Their Families.
At the international level the legal standards exist, the monitoring mechanisms exist and model policies have been drafted. What is needed most, what is needed now and urgently, is the political will of governments and the vision of societies to implement them.

Coming to the European Union and the Council of Europe and, of course, South Eastern Europe, I believe that a number of initiatives are necessary and I would like to suggest a few:

--First of all, there is a need for public policies to face migration in a holistic manner and not through ad hoc approaches; such policies should have human rights in their core in accordance with the international human rights standards;

--Regional European organizations could pursue contacts with the Secretary-General of the United Nations to explore ways in which initiatives on both sides can reinforce each other and promote the issue; in other words, the regional could benefit from the global;

--The EU and/or the Council of Europe could pursue high-level contacts and possibly high profile events with countries like Mexico or the Philippines, for example, which have a documented international interest in the issue of migration. The purpose would be a symbolic launch of a new concerted international interest in a regular/documentated migration.

--The EU and the Council of Europe should be encouraged to work towards adopting guiding legal principles for the protection and integration of migrants, based on the general terms on the Convention on the Rights of Migrant Workers and Members of Their Families and other relevant international instruments, the outcome of the World Conference Against Racism and other recent global initiatives .

--Governments and other actors can reduce domestic tensions by fostering a transnational and national dialogue to address negative myths about migration, and increase awareness of the benefits accrued by host countries because of migrants.

--The EU and the Council of Europe could launch a number of policy principles for the protection and promotion of migrants’ cultural rights in particular, which will foster inter-cultural dialogue between migrants and the societies in which they live .

--Within the context of the preparation of the 2004 Olympics and beyond, the EU could promote a commitment for the organization of “Migrants Cultural Olympics”.

--A coalition of European civil society organizations on migration could be created as a watchdog and advocacy mechanism on migration based on international human rights norms.

--Finally, and importantly, a private sector initiative could be created within Europe to promote migration with a human face.