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1 Introduction

It is often said that legally binding standards and the institutional governance of international migration do not sit well together. When it comes to the admission of migrant workers into their territories and labour markets, governments generally prefer flexible policies that can be tailored in response to changing economic conditions. The existence of and need for binding international legal standards to regulate the conditions under which migration takes place and the treatment of migrants is therefore viewed with considerable suspicion and scepticism, and sometimes with downright hostility. This also reflects the preference by governments to engage in forums outside of the United Nations, which are state-led, voluntary, informal and non-binding, and which give limited space to non-state actors such as social partners, migrant associations and other civil society organisations.¹

This approach, however, gives far too much room to the role and importance of state sovereignty in the regulation of the movement of

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1 See JB Grugel & N Piper 'Global governance, economic migration and the difficulties of social activism' (2011) 26 *International Sociology* 435; Report by the Special Rapporteur on the human rights of migrants, François Crépeau: Global migration governance, GA (5 August 2013), UN Doc A/68/283 (2013)22 para 121: 'Migration governance is becoming increasingly informal, ad hoc, non-binding and state-led, falling largely outside the United Nations framework in such forums as the Global Forum on Migration and Development and regional consultative processes. This leads to a lack of accountability, monitoring and oversight and the absence of a relationship with the formal normative monitoring mechanisms established within the United Nations.' This is slowly changing, however, with the commitment by UN member states at the UN Summit to Address Large Movements of Refugees and Migrants in September 2016 to adopt a Global Compact for Safe, Orderly and Regular Migration under UN auspices in 2018. New York Declaration for Refugees and Migrants, GA (3 October 2016), UN Doc A/RES/71/1 (2016) para 63.

persons. Given its transnational nature, regulation of migration cannot solely be the concern of individual states, which can no longer be neatly divided into destination, transit and origin countries. According to the International Labour Organisation (ILO), the movement of persons, especially working women and men, is an integral characteristic of globalisation that is reshaping the world of work in profound ways.² International migration is now also recognised as a key feature of global development. In September 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development,³ which is aimed at all countries, both developing and developed, and pledges to leave ‘no one behind’.⁴ While migration was not a part of the Millennium Development Goals (MDGs), adopted in 2000, it features in a number of places in the 2030 Agenda, thus affirming the important link between migration and global development.⁵ The Sustainable Development Goals (SDGs), in SDG 10 on reducing inequality within and amongst countries, contain the following target: ‘Facilitate orderly, regular, safe and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies’.⁶ While the contours of this target remain to be articulated more clearly, the meaning of the other key target referencing migration and specifically migrant workers, which is found in SDG 8 on promotion of ‘sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’, is unequivocal: ‘Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment’.⁷ Implicit in the former target is the understanding that the admission of foreigners or migrants, including migrant workers, to the territory remains in the purview of states, although this has to be realised in a safe and regular way, including through planned and well-managed migration policies. ‘One-size fits all’ policies, however, are not the answer as these need to be tailored to the specific circumstances of migration, either to or from a country (or both), with reference to the sub-regional or regional context. On the other hand, protection of the labour rights of all workers, including migrant workers, in the latter target is viewed as the concern of

2 ILO Declaration on Social Justice for a Fair Globalization, 2008, International Labour Conference, 97th Session, adopted on 10 June 2008, Preamble, Recital 2. For the text, see http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang-en/index.htm (accessed 26 June 2016).

3 Resolution 70/1: Transforming our world: The 2030 Agenda for sustainable development, GA (25 September 2015), UN Doc A/RES/70/1 (2015).

4 n 3 above, Preamble, Recital 2.

5 The 2030 Agenda Declaration recognises (n 3 above para 29): ‘[T]he positive contribution of migrants for inclusive growth and sustainable development’ and that ‘international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses’.

6 n 3 above, SDG Target 10.7.

7 n 3 above, SDG Target 8.8.

the entire international community, with the result that a level playing-field of minimum international standards is essential.

These minimum international standards have already been developed. They are found in international labour law and international human rights law, and in the specific instruments adopted to protect migrant workers and their families. Consequently, the application of flexible migration policies in accordance with changing economic conditions that do not give sufficient attention to the human and labour rights of migrant workers are the antithesis of global sustainable development in all of its dimensions. In this sense, the need to protect ‘the interests of workers when employed in countries other than their own’, as highlighted in the ILO Constitution almost 100 years ago,⁸ has come full circle. The Constitution also proclaimed that ‘universal and lasting peace can be established only if it is based upon social justice’⁹ and the Declaration of Philadelphia concerning the aims and purposes of the ILO, adopted in 1944 and annexed to the ILO Constitution, underscores that ‘labour is not a commodity’.¹⁰ When applied to the situation of migrant workers, these principles resonate very strongly with the 2030 Agenda for Sustainable Development, which pledges that ‘no one will be left behind’ and underscores in SDG 8 that economic growth and decent work are closely interrelated.¹¹

This chapter seeks to highlight the complementarities between international labour standards and human rights law in protecting migrant workers. These systems of law are not mutually exclusive and overlap in important areas. They have also both given specific consideration to migrant workers. As non-citizens with a restricted immigration status and often working in precarious and low-wage occupations, women and men migrant workers are particularly at risk of exploitative conditions and discrimination. The chapter assesses the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)¹² and its synergies with the specific instruments to protect migrant workers previously adopted by the ILO’s International Labour Conference, namely the Migration for Employment Convention (Revised), 1949 (No 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No 143), and their accompanying non-binding Recommendations Nos 86 and 151.¹³ It is important to view these

8 ILO Constitution, 1919 (as amended). For the text, see http://www.ilo.org/dyn/normlex/en/f?p=1000:62:3632631635012707::NO:62:P62_LIST_ENTRIE_ID:2453907:NO (accessed 26 June 2016).

9 n 8 above, Preamble, Recital 1.

10 International Labour Conference, 26th Session, Declaration concerning the aims and purposes of the ILO, Philadelphia (10 May 1944); ILO Constitution (n 8 above) para 1(a).

11 2030 Agenda for Sustainable Development (n 3 above) Preamble Recital 2 and SDG 8.

12 GA (18 December 1990), UN Doc A/RES/45/158 (1990).

13 For the texts, see ILO NORMLEX – Information System on International Labour Standards <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO> (accessed 26 June 2016).

instruments along a historical continuum and as mutually reinforcing.¹⁴ While there are varying rates of state ratifications for each of these instruments, it is arguable that the fullest level of protection of migrant workers can only be achieved with ratification and effective implementation of all three,¹⁵ as each instrument contains unique provisions which are not necessarily found in the other two. Similarly, and as discussed below, the work of the ILO supervisory system and the ICRMW's supervisory body, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter 'the Committee'),¹⁶ is also mutually reinforcing. This is evident from the Committee's consideration of state party reports, the two General Comments it has adopted to date on migrant domestic workers and the rights of migrant workers in an irregular situation and members of their families, and the days of general discussion held by the Committee that have addressed the linkages between migration and development, the rights of migrant domestic workers, the rights of migrant workers in an irregular situation, the role of migration statistics, and labour exploitation of migrant workers.

2 International labour standards and human rights

While international labour law and international human rights law are two distinct branches of law, they are closely related and indeed overlap. The ILO fundamental principles and rights at work found in the eight core conventions of the ILO addressing trade union rights, abolition of forced labour, elimination of child labour and non-discrimination in employment and occupation¹⁷ are also reflected in the specific provisions of the core international human rights instruments, and particularly the Universal Declaration of Human Rights (Universal Declaration) and the two International Covenants on Civil and Political Rights (ICCPR) and

14 Indeed, 2015 was also the 40th anniversary of the adoption of Convention No 143, while 2014 was the 65th anniversary of the adoption of Convention No 97.

15 The ICRMW (n 12 above) has been ratified by 51 state parties, while 49 and 23 state parties have ratified Convention No 97 and Convention No 143 respectively, although only five countries (Albania, Bosnia and Herzegovina, Burkina Faso, Philippines, Tajikistan) have ratified all three Conventions.

16 For a comprehensive overview of the functions and work of the Committee, see V Chetail 'The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families' in P Alston & F Megret (eds) *The United Nations and human rights: A critical appraisal* 2nd ed (forthcoming 2018). For an earlier article by the former Secretary to the Committee, see C Edelenbos 'Committee on Migrant Workers and implementation of the ICRMW' in P de Guchteneire et al (eds) *Migration and human rights: The United Nations Convention on Migrant Workers' Rights* (2009) 100-121.

17 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87); Right to Organise and Collective Bargaining Convention, 1949 (No 98); Forced Labour Convention, 1930 (No 29) and its 2014 Protocol; Abolition of Forced Labour Convention, 1957 (No 105); Minimum Age Convention, 1973 (No 138); Worst Forms of Child Labour Convention, 1999 (No 182); Equal Remuneration Convention, 1951 (No 100); Discrimination (Employment and Occupation) Convention, 1958 (No 111). The ILO Declaration on Fundamental Principles and Rights at Work, adopted

Economic, Social and Cultural Rights (CESCR).¹⁸ Indeed, when it comes to trade union rights, the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87) is expressly referred to in the respective provisions of both Covenants.¹⁹

Moreover, the International Labour Conference has clearly underscored that ILO fundamental principles and rights at work are human rights.²⁰ Many of the other international labour standards can also be encapsulated in general human rights law, particularly economic and social rights, such as the rights to work, to enjoyment of just and favourable conditions of work, to social security, and to the enjoyment of the highest attainable standard of physical and mental health.²¹

This close interaction between human rights and labour rights was reiterated by the ILO Director-General in his statement on Human Rights Day on 10 December 2015:

The ILO continues to highlight the fundamental connection between human rights and labour rights and the realization of decent work for all: work carried out in conditions of freedom, equity, security and human dignity.

The provisions of the two Covenants echo the fundamental principles and rights at work concerning freedom from child labour and forced labour, freedom from discrimination at work and freedom of association and collective bargaining. They are enabling rights, underpinning fairness and justice in the world of work. The related ILO Conventions form an integral part of the United Nations' overall human rights framework.²²

These rights are clearly very relevant to the protection of migrant workers and the fair governance of labour migration. Indeed, when the

by the International Labour Conference at its 86th Session in June 1998, stipulates that 'all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions' (para 2). For the text of the Declaration, see <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm> (accessed 26 June 2016).

18 See respectively GA Resolution 217 A (III) (10 December 1948), UN Doc 999 UNTS 171; 999 UNTS 3.

19 See ICCPR (n 18 above) art 22(3) & CESCR (n 18 above) art 8(3).

20 International Labour Conference, 101st Session Resolution concerning the Recurrent Discussion on Fundamental Principles and Rights at Work Geneva (2012) Conclusions, para 5, reaffirming the particular significance of fundamental principles and rights at work 'both as human rights and enabling conditions for the achievement of the other ILO strategic objectives'. The Conclusions also acknowledged the fact that certain population groups, including migrant workers, 'are more exposed to violations of fundamental principles and rights at work than others' (para 11).

21 CESCR (n 18 above) arts 6, 7, 9 & 12 respectively.

22 'The fundamental connection between human rights and labour rights' Statement of the ILO Director-General on Human Rights Day (10 December 2015) http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_434604/lang-en/index.htm (accessed 26 June 2016).

independent ILO Committee of Experts on the Application of Conventions and Recommendation (hereafter ‘Committee of Experts’) conducted a General Survey on the eight ILO fundamental conventions in 2012, migrant workers were identified as one of the population groups subject to particular risks from violations of the rights in these instruments, especially violations relating to forced labour and equality of opportunity and treatment and non-discrimination.²³ Further attention is devoted to this question in the Committee of Experts’ most recent General Survey on the ILO migrant worker instruments, which notes that the obligation to respect the ‘basic human rights of all migrant workers’ in article 1 of Convention No 143 includes, amongst other human rights, the ‘fundamental rights at work as embodied in the eight ILO fundamental Conventions and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work, 1998’.²⁴ Moreover, in examining the government reports on the application of the ILO fundamental Conventions, the Committee of Experts has also drawn attention to ‘the particular vulnerability of women migrant workers, especially those employed in occupations such as domestic work, agriculture, manufacturing and the entertainment industry, to violations of their basic human rights’.²⁵

3 ILO Conventions on migrant workers and the ICRMW

The specific instruments adopted to govern labour migration and protect migrant workers each have their particular historical context. The adoption of both ILO Conventions was informed by turbulent events affecting Europe in particular. Convention No 97, which was a revised version of an earlier Convention adopted in 1939 (but never ratified),²⁶ has a ‘the equality of treatment between national workers and migrant workers moving from countries with labour surpluses to those with labour shortages, a particular feature of much of western Europe in the aftermath of World War II. Convention No 97 was only concerned with migrant workers moving in accordance with the laws at the time, who constituted the bulk of such workers, and thus does not apply to migrant workers in irregular status. The context for the adoption of Convention No 143 was very different. The oil crisis of 1973 and the subsequent economic recession, resulting in a stop on labour migration to western Europe, gave rise to increased incidences of clandestine or irregular migration and

23 International Labour Conference, 101st Session, ‘Giving globalization a human face’ General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization (2012) paras 295 & 776-781.

24 International Labour Conference, 105th Session, ‘Promoting fair migration’ General Survey concerning the migrant workers instruments (2016) para 276.

25 ILO (n 24 above) para 280.

26 ILO Migration for Employment Convention, 1939 (No 66).

related abuses at the hands of human traffickers and migrant smugglers, although the difference between trafficking and smuggling, with the definition of 'trafficking in persons' focused on the purpose of exploitation, was only fully articulated in separate instruments adopted by the UN in 2000.²⁷ While strengthening the provisions on equal treatment for migrant workers in a regular situation,²⁸ Convention No 143 also seeks to address irregular migration, including through member obligations to respect the basic human rights of all migrant workers, including those in irregular status, and in collaboration with other Members.²⁹ Indeed, the context for the adoption of Convention No 143 is not too dissimilar from that leading up to the genesis of the ICRMW in the concern with the increasing violations of the human rights of all migrant workers, including those in irregular status, discrimination and lack of equality of treatment, and the need for inter-state co-operation to ensure sound, equitable, lawful and humane conditions in connection with the international migration of workers.³⁰ While both instruments apply to all migrant workers, the ICRMW provides a considerably more complete list of rights in Part III drawing on those found in the ICCPR and CESCR in particular, although there are some inconsistencies, especially in regard to trade union rights, which have since been clarified in the Committee's General Comment 2, discussed in Section 4.2 of the chapter below.

In terms of process, an important difference was that Convention No 143 was negotiated relatively quickly, while ICRMW took just over ten years to gestate because of lengthy and arduous negotiations resulting in its adoption by the General Assembly on 18 December 1990. Moreover, as with most of the other core international human rights instruments,³¹ 20 ratifications were required for its entry into force, with the result that the ICRMW only came into force around 13 years later in July 2003. In contrast, Convention No 143 came into effect much sooner (9 December

27 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime, UN General Assembly Resolution 55/25 of 15 November 2000. Under the former Protocol, 'trafficking in persons' is defined as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs' (art 3(a)). The latter Protocol defines 'smuggling of migrants' as 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident' (art 3(a)).

28 Convention No 143 (n 13 above) Part II on Equality of Opportunity and Treatment.

29 n 13 above, arts 1 & 3 respectively.

30 ICRMW (n 12 above) Parts II, III, IV & VI.

31 With the exception of the ICCPR (n 18 above) and CESCR (n 18 above) in respect of which 35 ratifications were required for their entry into force.

1978) as only two ratifications are required for the entry into force of ILO conventions.

As observed in the literature relating to the drafting of the ICRMW, there was a lively debate whether it was even needed given that the ILO is the specialised UN agency responsible for the world of work with a mandate to establish minimum international norms in this area, as indeed has been noted above, and the risk of duplication or conflict with the ILO standards that had already been adopted,³² namely Conventions Nos 97 and 143 and their accompanying Recommendations. Nonetheless, it was argued by the UN expert appointed to study the migrant workers' question that the elaboration of future instruments relating to migrant workers should involve the UN 'to ensure that all humanitarian aspects of the problem are covered' and that the ILO had acknowledged that its competence to deal with human rights in general was limited.³³ The scope of ILO's mandate when it comes to the protection of migrant workers is insufficient to provide protection in its fullest sense, particularly in relation to social and cultural rights not directly linked to the workplace, such as rights to education, culture and housing. In this sense, therefore, a broader instrument was justified in light also of the tendency to supplement the International Bill of Rights³⁴ with specific instruments aimed at the protection of the human rights of certain categories of human beings who are seen as particularly vulnerable. Consequently, the decade between 1979 and 1989 saw the adoption of specific human rights treaties on the Elimination of All Forms of Discrimination against Women and the Rights of the Child.³⁵

While the wish to ensure the broadest protection possible for migrant workers justified therefore the negotiation of an instrument within the UN, the choice of this forum also had its disadvantages, which is reflected in a

- 32 M Hasenau 'Setting norms in the United Nations system: The Draft Convention on the Protection of the Rights of All Migrant Workers and Their Families in relation to ILO in standards on migrant workers' (1990) 28 *International Migration Review* 133; R Böhning 'The protection of migrant workers and international labour standards' (1988) 26 *International Migration* 133; R Böhning 'The ILO and the new UN Convention on Migrant Workers: The past and future' (1991) 25 *International Migration Review* 698. See also R Cholewinski *Migrant workers in international human rights law: Their protection in countries of employment* (1997) 141-142 and C Edelenbos 'Committee on migrant workers and implementation of the ICRMW' in De Guchteneire et al (n 16 above) 115.
- 33 Cholewinski (n 32 above) 140, citing Exploitation of labour through illicit and clandestine trafficking (Draft recommendations submitted by Mrs Halima Embarek Warzazi, Rapporteur), ECOSOC (9 September 1975) UN Doc E/CN.4.Sub.2/L.636 (1975) 1.
- 34 The term often used to describe the Universal Declaration (n 18 above), the ICCPR (n 18 above) and CESCR (n 18 above) as a package containing the principal human rights.
- 35 See respectively Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13 (18 December 1979), and the Convention on the Rights of the Child, 1577 UNTS 3 (20 November 1989). Subsequently, the Convention on the Rights of Persons with Disabilities, 2515 UNTS 3 (13 December 2006) was also adopted.

number of weaker provisions in the eventual text of the ICRMW adopted by the General Assembly in 1990 as compared with equivalent clauses in the two ILO Conventions.³⁶ International human rights treaties in the UN are negotiated between governments, while in the ILO representative employer and worker organisations also play an important role, alongside governments (represented by the labour ministries) in the negotiation and adoption of international labour standards. Consequently, the ICRMW reflects a compromise view of states, while ILO Conventions Nos 97 and 143 reflect a broader compromise between governments and social partners. While the ILO, in an observer capacity, played an important role in the negotiations on the text of the ICRMW, and was thus able to influence it, such a role is very different from the ‘decision-making’ or ‘voting’ function that employer and worker delegates had in deliberations over the two ILO Conventions concerning migrant workers.³⁷ This distinction needs to be kept in mind when considering the texts of the ICRMW vis-à-vis those of ILO Conventions Nos 97 and 143 and is also the reason why it is important that all three legally binding texts should be considered together.

4 ILO and the Committee on Migrant Workers: A mutually reinforcing relationship

Part VII of the ICRMW is concerned with its application in state parties and the treaty body established to achieve this, namely, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Given the close synergies between ILO’s work on migrant workers and the ICRMW, the ILO features explicitly in this part of the ICRMW addressing its supervision.³⁸ A sharing of information between the ILO supervisory system and the Committee is mandated in Part VII of

36 See eg in particular the provisions addressing trade union rights (arts 26 & 40), access to employment for documented migrant workers and members of their families (arts 52 & 53), and the important function of social dialogue which is largely absent from the ICRMW, with the exception of a reference in art 33(1)(b) to the possible role of trade unions and employers in dissemination of information to migrant workers.

37 Indeed, the influential role played by social partners and particularly trade unions in the standard-setting work of the ILO was one of the reasons why some developing countries wished to negotiate the Convention under UN auspices where they also have an ‘automatic majority’. See R Böhning ‘The ILO and the New UN Convention on Migrant Workers: The past and future’ (n 32 above) 700-701.

38 As noted by V Chetail ‘The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families’ in Alston & Mégret (n 16 above) 3, however, the Committee almost did not come into existence because a number of, mostly Western, countries took the view that the ILO should assume the supervisory function for the ICRMW. He cites (n 16 above, at n 12), the view of the United States which supported such a role for the ILO in the light of its ‘lengthy experience’ and its monitoring ‘machinery ... through a detailed reporting system and well-established system of direct contacts with member states’. Working Paper presented by the United States of America, UN Doc A/C.3/35/WG.1/CRP.6 (19 November 1980), para 11(d), Annex VI to the Report of the Open Working Group, UN Doc A/C.3/35/13 (25 November 1980).

the ICRMW, with the UN Secretary-General required to transmit the state reports submitted under the ICRMW and related information to the ILO Director-General.³⁹ The Committee is also obliged to invite the ILO to appoint officials to participate, in a consultative capacity, in the Committee's meetings.⁴⁰ This section of the chapter describes how this interaction between the ILO and Committee takes place in practice with reference to the consideration of state party reports, the preparation of general comments, days of general discussion as well as the organisation of other events by, or in collaboration with, the Committee.

4.1 Consideration of state party reports

While, as noted above, the UN Secretary-General is required to transmit state party reports and related information to the ILO Director-General, he also has the discretion, in consultation with the Committee to send such reports to other specialised agencies and organs of the UN as well as intergovernmental organisations, and to invite them to be present in meetings.⁴¹ In practice, the Committee holds a 'closed door' meeting with interested UN (normally ILO, the Office of the UN High Commissioner for Human Rights (OHCHR), the UN High Commissioner for Refugees (UNHCR), and the International Organisation for Migration (IOM), which became a related agency of the UN in September 2016) and requests them to provide any relevant information in respect of those state parties which have submitted reports or have been requested to submit them. In the case of the ILO, this information includes a compilation of recent observations or direct requests⁴² to those governments by the principal ILO supervisory body, the independent Committee of Experts, concerning labour migration and the protection of migrant workers in respect of relevant ILO instruments ratified by them. In addition to Conventions Nos 97 and 143, there may also be references to observations and direct

39 ICRMW (n 12 above) art 74(2): 'The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by states parties concerned and information relevant to the consideration of these reports, in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the present Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide'.

40 ICRMW (n 12 above) art 74(5).

41 ICRMW (n 12 above) art 74(6). In practice, the reports and related information are made available, soon after they have been received, on the Committee's website <http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIndex.aspx> (accessed 26 June 2016).

42 'Observations contain comments on fundamental questions raised by the application of a particular Convention by a state. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned'. See *Rules of the game: A brief introduction to international labour standards* rev ed (2014) 102. All the observations and direct requests are accessible from ILO NORMLEX (n 13 above).

requests concerning migrant workers under the eight ILO fundamental conventions, or other relevant instruments, such as the Domestic Workers Convention, 2011 (No 189) and the Private Employment Agencies Convention, 1999 (No 181), which contains important provisions relating to the recruitment of migrant workers,⁴³ or specific technical conventions such as those relating to social security⁴⁴ or others such as the Nursing Personnel Convention, 1977 (No 149). Information on pertinent technical co-operation projects implemented by the ILO in the countries concerned is also normally provided.⁴⁵

In recognition of the broader international framework for the protection of migrant workers, these instruments are also commonly referenced in the Concluding Observations prepared by the Committee after consideration of a state party's report. Indeed, in its first ever Concluding Observation, to Mali, in May 2006, the Committee called upon that country to accede to Conventions Nos 97 and 143.⁴⁶ Moreover, the Committee also calls upon the state parties concerned, if they have not already done so, to ratify the eight ILO fundamental rights conventions, Conventions Nos 181 and 189,⁴⁷ as well as other ILO Conventions.⁴⁸ However, references by the Committee in its Concluding Observations to

43 NORMLEX (n 13 above). Convention No 181, art 7(1), contains the important principle that recruitment fees or costs should not be charged to workers, including migrant workers ('Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers'), while art 8(1) obliges a member, 'after consulting the most representative organizations of employers and workers, [to] adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies'.

44 See in particular the ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No 19), the Social Security (Minimum Standards) Convention, 1952 (No 102) and the Equality of Treatment (Social Security) Convention, 1962 (No 118).

45 Eg the ILO project on 'Enhancing the governance of labour migration and the protection of migrant workers' rights in Tunisia, Morocco, Egypt and Libya (2013-2016)' (IRAM), funded by the Swiss Agency for Development and Cooperation (SDC). For more information on the project, see http://www.ilo.org/global/topics/labour-migration/projects/WCMS_226517/lang-en/index.htm (accessed 26 June 2016).

46 Concluding Observations on the initial report of Mali, CMW (31 May 2006), UN Doc CMW/C/MLI/CO/1 (2006) 3, para 11. See also C Edelenbos 'Committee on Migrant Workers and implementation of the ICRMW' in De Guchteneire et al (n 16 above) 107.

47 See eg Concluding Observations on the initial report of Timor-Leste, CMW (8 October 2015), UN Doc CMW/C/TLS/CO/1 (2015) in which the Committee (3, para 16) recommends that the state party consider ratifying or acceding, as soon as possible, to ILO Conventions Nos 97, 143 and 189; Concluding Observations on the initial report of Guinea, CMW (8 October 2015), UN Doc CMW/C/GIN/CO/1 (2015), in which the Committee (2-3, para 12) encourages the state party to consider acceding, as soon as possible, to ILO Conventions Nos 97, 181 and 189 (Guinea has ratified Convention No 143). See also Concluding Observations on the initial report of Turkey, CMW (2 May 2016), UN Doc CMW/C/TUR/CO/1 (2016) in which the Committee (4, paras 19-20), recommends that Turkey consider ratifying ILO Conventions Nos 97, 143, 181 & 189.

48 Eg in Concluding Observations on Cabo Verde in the absence of a report, CMW (8 October 2015), UN Doc CMW/C/CPV/CO/1 (2015) and Concluding

the observations and direct requests of the ILO Committee of Experts have been much less frequent.⁴⁹ For example, the Committee referred explicitly to one of the direct requests of the Committee of Experts in its Concluding Observation on Bosnia and Herzegovina, in relation to article 33 of the ICRMW on the right of all migrant workers to information:

The Committee notes the existence of public employment services which provide information on migration. The Committee, however, notes (as did the ILO Committee of Experts on the Application of Conventions and Recommendations in its Direct request of 2008 in relation to the Migration for Employment Convention (Revised), 1949 (No 97)), that the existence of official information services in itself is not enough to guarantee that migrant workers are sufficiently and objectively informed on migration-related issues. The Committee reiterates the concern of the ILO Committee of Experts that there is inadequate protection for migrant workers from misleading information from intermediaries who might have an interest in encouraging migration in any form, regardless of the consequences for the workers involved.⁵⁰

4.2 General Comments

To date, and as noted in the Introduction, the Committee has adopted two General Comments on migrant domestic workers and the rights of migrant workers in an irregular situation and members of their families.⁵¹ In accordance with the obligation in article 74 of the ICRMW, ILO officials

Observations on the initial report of the Seychelles, CMW (14 September 2015), UN Doc CMW/C/SYC/CO/1 (2015); the Committee (3, paras 14-15 & 3, paras 12-13), respectively, also recommended that the state party consider acceding to the ILO Minimum Wage Fixing Convention, 1970 (No 131) and the Safety and Health in Construction Convention, 1988 (No 167). See also Concluding Observations on the initial report of Turkey (n 47 above) 4, paras 19-20 with regard to ILO Convention No 131.

- 49 See also V Chetail 'The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families' in Alston & Megret (n 16 above) 19.
- 50 Concluding Observations on the initial report of Bosnia and Herzegovina, CMW (3 June 2009), UN Doc CMW/C/BIH/CO/1 (2009) 5, para 27. In 2009, the Committee also raised concerns about the legal position in the Philippines affording trade union rights for migrant workers lawfully residing and working in that country, but only if they are nationals of a country which grants the same or similar rights to Filipino workers. In this regard, the Committee reiterated a 2008 direct request by the ILO Committee of Experts in relation to the application by the Philippines of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87) calling on 'the state party [to] take the necessary measures, including legislative amendments to sections 269 and 272(b) of the Labour Code, to guarantee to all migrant workers and members of their families lawfully residing within the Philippines the right to join, form and to form part of the leadership of, associations and unions, in accordance with article 40 of the [ICRMW], as well as with ILO Convention No 87, not subject to reciprocity'. Concluding Observations on the initial report of the Philippines, CMW (22 May 2009), UN Doc CMW/C/PHL/CO/1 (22 May 2009) 7, para 34.
- 51 See respectively General Comment 1 on migrant domestic workers, CMW (23 February 2011), UN Doc CMW/C/GC/1 (2011) and General Comment 2 on the rights of migrant workers in an irregular situation and members of their families, CMW (28 August 2013), UN Doc CMW/C/GC/2 (2013).

participated, in a consultative capacity, in the Committee's meetings and deliberations on the preparation of both General Comments, which raised delicate issues in respect of ILO's own standard-setting work. This collaboration between the ILO and the Committee was important to ensure coherence in international law between international human rights and labour standards.

General Comment 1 on migrant domestic workers had its genesis in a day of general discussion on migrant domestic workers that the Committee held in October 2009.⁵² It was published in February 2011, and so a few months before the adoption of the ILO Domestic Workers Convention, 2011 (No 189) and accompanying Recommendation No 201. While the Committee's deliberations over the rights of migrant domestic workers undoubtedly gave important attention to this issue, as noted by one commentator:

[T]he very timing of this General Comment No 1 could be debatable. [...] The hidden purpose was perhaps to influence the negotiation of the ILO convention – which contains specific provisions on domestic migrant workers – and arguably to increase the low visibility of the [Committee]. Because of the risk of adopting diverging standards, however, it would have been more cautious for the Committee to wait for the adoption of the ILO Convention before detailing its own interpretation in a general comment.⁵³

It was therefore important to ensure potential consistency between both instruments, which was particularly challenging for the ILO in light of the fact that no official draft of the Convention was available at the time and that negotiations over the text were still to take place during the 100th Session of the International Labour Conference.⁵⁴ The only official documents available were the law and practice report on 'Decent work for domestic workers' discussed at the 99th Session of the International Labour Conference in June 2010, which is cited by the Committee in the General Comment, and the Conference report of the Committee on Domestic Workers containing proposed conclusions with a view to the adoption of a Convention and a Recommendation.⁵⁵ These documents laid the groundwork for the negotiations on the text of Convention No 189 (and accompanying Recommendation No 201) during the 100th Session in 2011. General Comment 1 contains a working definition of 'domestic

52 See sec 4.3 below on 'Days of general discussion'.

53 Chetail (n 49 above) 15 (footnote omitted).

54 At around the same time, the ILO also worked closely with the European Union Agency for Fundamental Rights (FRA) to ensure a consistent approach in the preparation of FRA's report on 'Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States' (2011).

55 See respectively ILO, 99th Session, 'Decent work for domestic workers' Report IV(1) (2010) and ILO, 99th Session 'Report of the Committee on Domestic Workers: Proposed Conclusions' (2010) (124-132). For both reports, see <http://www.ilo.org/ilc/ILCSessions/99thSession/lang-en/index.htm> (accessed 26 June 2016).

worker', which was subsequently included in Convention No 189.⁵⁶ It also draws on the ILO evidence base by citing important data on the proportion of domestic work in total employment in both developed and industrialised countries.⁵⁷ While no global or regional estimates of migrant domestic workers were available at the time, such figures have since been released by the ILO, indicating that 11.5 million of the 67.1 million domestic workers in the world are international migrants (17,2 per cent of the total), and that women comprise 74,4 per cent or about 8.5 million of all migrant domestic workers.⁵⁸ Finally, the General Comment also draws attention to ILO fundamental conventions, and particularly those relating to the elimination of child labour⁵⁹ in outlining what kind of domestic work should not be performed by minors.⁶⁰

In adopting General Comment 2 on the rights of migrant workers in an irregular situation and members of their families, the Committee wished to clarify the application of the ICRMW to this particularly vulnerable category of migrants. This entailed the sensitive task of considering the rights afforded by the ICRMW to this group in light of the other core international human rights treaties, in particular the ICCPR and CESCR, and relevant ILO international labour standards. In General Comment 2, the Committee underscores the particular importance of international labour standards and their application to migrant workers, including those in an irregular situation.

International labour standards adopted by the International Labour Conference of the [ILO] apply to migrant workers, including those in an irregular situation, unless otherwise stated. The fundamental principles and rights at work set out in the eight fundamental ILO Conventions apply to all migrant workers, irrespective of their nationality and migration status. The 1998 ILO Declaration on fundamental principles and rights at work and its

56 General Comment 1 (n 51 above) 2, para 5, in which the Committee notes that 'the term "domestic worker" generally refers to a person who performs work within an employment relationship in or for other people's private homes, whether or not residing in the household'. Convention No 189 (n 43 above and accompanying text), defines 'domestic work' as 'work performed in or for a household or households' and 'domestic worker' as 'any person engaged in domestic work within an employment relationship'. See arts 1(a) & (b) respectively.

57 Namely, that domestic work accounts for between 4 and 10 per cent of total employment (both female and male) in developing countries and between one and 2,5 per cent in industrialised countries. See General Comment 1 (n 51 above) 1, para 1, citing 'Decent work for domestic workers' (n 55 above) 6, para 20.

58 ILO 'Global estimates on migrant workers and migrant domestic workers: Results and methodology' (2015) xiii (Executive Summary) http://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang-en/index.htm (accessed 26 June 2016).

59 Conventions 138 & 182 (n 17 above).

60 General Comment 1 (n 51 above) 10-11, para 56: 'In line with the Convention on the Rights of the Child and relevant [ILO] instruments, states should ensure that migrant children do not perform any type of domestic work which is likely to be hazardous or harmful to their health or physical, mental, spiritual, moral or social development. States shall refrain from adopting policies aimed at recruiting domestic migrant children.'

follow-up requires all ILO member states to promote and realize the principles concerning the fundamental rights enshrined in these Conventions. A number of other ILO standards of general application and those containing specific provisions on migrant workers in the areas of employment, labour inspection, social security, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction, hotels and restaurants, and domestic work, are of particular importance to migrant workers in an irregular situation. Lastly, in formulating national laws and policies concerning labour migration and the protection of migrant workers in an irregular situation, states are also guided by ILO Convention No 97 ... Convention No 143 ... and the accompanying Recommendations Nos 86 and 151.⁶¹

The most relevant ILO instrument to the protection of this group of migrant workers is Convention No 143, which explicitly addresses their rights in Part I, with article 1 obliging members 'to respect the basic human rights of all migrant workers', which, according to the ILO Committee of Experts, refer to 'the fundamental human rights contained in the international instruments adopted by the United Nations in this domain, some of which include the fundamental rights of workers'.⁶² In this regard, the ILO Committee of Experts gives particular attention to the provisions on fundamental principles and rights at work that apply to all migrant workers contained in the ICRMW⁶³ and underscores that 'all migrant workers' includes migrants in an irregular situation.⁶⁴ Given the synergies between the ICRMW and Part I of Convention No 143, Convention No 143 features in General Comment 2. For example, the Committee observes that the important obligation in article 22(6) of the ICRMW, which enables a migrant worker affected by an expulsion decision to have 'a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities' echoes article 9(1) of ILO Convention No 143.⁶⁵ The Committee underscores the need to ensure this right in practice and proposes helpfully that state parties apply the following three good practices to realise this: (i) 'grant migrant workers and their family members a reasonable period of time prior to their expulsion to claim wages and benefits'; (ii) 'consider time-bound or expedited legal proceedings to address such claims by migrant workers'; and (iii) 'conclude bilateral agreements so that migrant workers who return to their state of origin may have access to justice in the

61 General Comment 2 (n 51 above) 6-7, para 12.

62 'Promoting fair migration' (n 24 above) para 276. In the accompanying footnote, the Committee cites the Universal Declaration (n 18 above) and the nine core human rights instruments, in particular the ICCPR (n 18 above), CESCR (n 18 above) and the ICRMW (n 12 above).

63 'Promoting fair migration' (n 24 above) para 277.

64 'Promoting fair migration' (n 24 above) para 300.

65 Under art 9(1), migrant workers in an irregular situation and when their position cannot be regularised 'shall enjoy equality of treatment for [themselves] and [their] family in respect of rights arising out of past employment as regards remuneration, social security and other benefits'.

state of employment to file complaints about abuse and to claim unpaid wages and benefits'.⁶⁶

In addition to Convention No 143, General Comment 2 draws upon a number of other ILO instruments for guidance across rights' areas ranging from discrimination in employment, protection of the children of migrant workers in an irregular situation, maternity protection, the right to form and join trade unions, labour inspection, and social security rights. In consideration of article 25(1) of the ICRMW, which provides for equal treatment of migrant workers, irrespective of their immigration status, with nationals in respect of remuneration⁶⁷ and other conditions of work and terms of employment, the ILO Discrimination (Employment and Occupation) Convention, 1958 (No 111) is explicitly cited by the Committee. The 'minimum age of employment' is expressly identified as a 'term of employment' in article 25(1)(b), and the Committee observes, moreover, that this shall equally apply to migrant children and that the minimum age shall not be less than 15 years, in accordance with article 2 of the ILO Minimum Age Convention, 1973 (No 138).⁶⁸ It further notes that the conditions of work and terms of employment, listed in articles 25(1)(a) and (b), are not exhaustive and that 'the equal treatment principle also covers any other matter that, according to national law and practice, is considered a working condition or term of employment, such as maternity protection'.⁶⁹

General Comment 2 also addresses the delicate question of the scope of trade union rights for migrant workers in an irregular situation. Article 26 of the ICRMW protects the right of all migrant workers, including those in irregular status, *to join* trade unions and other associations protecting their interests, but it does not provide for protection of the right *to form* trade unions while this right is clearly enjoyed by migrant workers in a regular situation in Part IV of the ICRMW.⁷⁰ With reference to its General Comment 1, the Committee underscores that 'the right to organize and to engage in collective bargaining is essential for migrant workers to express their needs and defend their rights, in particular through trade unions'.⁷¹ Moreover, it notes that article 26, when read together with other

66 General Comment 2 (n 51 above) 15, para 55.

67 With regard to the right of all migrant workers to equality of treatment in respect of remuneration, the Committee emphasises (n 51 above) 17, para 63, that '[state parties] should take effective measures against non-payment of wages, delay in payment until departure, transfer of wages into accounts that are inaccessible to migrant workers, or payment of lower wages to migrant workers, especially those in an irregular situation, than to nationals'.

68 General Comment 2 (n 51 above) para 61.

69 n 51 above, para 62. See also the ILO Maternity Protection Convention, 2000 (No 183).

70 ICRMW (n 12 above) art 40(1) reads: 'Migrant workers and members of their families shall have *the right to form* associations and trade unions in the state of employment for the promotion and protection of their economic, social, cultural and other interests' (my emphasis).

71 General Comment 2 (n 51 above) 17, para 65.

international human rights instruments, may create broader obligations for state parties to both the ICRMW and these instruments. In this regard, the Committee observes that article 2 of the ILO Freedom of Association and Protection of the Rights to Organise Convention, 1948 (No 87)⁷² and article 22(1) of the ICCPR (which also refers explicitly to Convention No 87), both apply to migrant workers in an irregular situation.⁷³ Moreover, the Committee points out, with reference also to General Comment 1, that article 26 contains a number of related entitlements, such as the 'right to participate in meetings and activities, and to seek the assistance, of trade unions and any other associations established in accordance with law' and that state parties are therefore obliged to

ensure these rights, including the right to collective bargaining, encourage self-organisation among migrant workers, irrespective of their migration status, and provide them with information about relevant associations that can provide assistance.⁷⁴

With a view to guaranteeing that migrant workers in an irregular situation are able to enjoy their rights arising from employment, including past employment, as well as other social rights, the Committee underscores in General Comment 2, with reference to the ILO Labour Inspection Convention, 1947 (No 81), the need to maintain a 'firewall' between the activities of social and labour market institutions, such as labour inspection services, and immigration enforcement authorities:⁷⁵

[S]tates parties should also step up inspections of places where migrant workers are routinely employed and instruct labour inspectorates not to share data concerning the migration status of migrant workers with immigration authorities, as their primary duty is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, in accordance with [Article 3(1)(a) of ILO Convention No 81].⁷⁶

72 Article 2 of Convention No 87 (n 17 above) which applies to both workers' and employers' organisations is unequivocal: 'Workers and employers, *without distinction whatsoever*, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation' (my emphasis).

73 General Comment 2 (n 51 above) 17-18, para 65.

74 n 51 above, para 65.

75 In 'Promoting fair migration' (n 24 above) para 482, the ILO Committee of Experts refers to its 2006 General Survey on labour inspection in which it pointed out that 'cooperation between the labour inspectorate and immigration authorities should be carried out cautiously keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers, and to improve their working conditions, rather than the enforcement of immigration law. Where a large proportion of inspection activities relate to verifying the immigration status of migrant workers, this may mobilize considerable resources in terms of staff, time and material resources, to the detriment of those allocated to the inspection of conditions of work and deter them from making complaints'.

76 General Comment 2 (n 51 above) 17, para 63. The need for such 'firewalls' has also been recently underscored by the Council of Europe's European Commission against Racism and Intolerance (ECRI). See ECRI General Policy Recommendation 16 on

With regard to social security rights, article 27(1) of the ICRMW, which applies to all migrant workers, including those in irregular status, provides that the right of migrant workers to social security is subject to the applicable bilateral and multilateral treaties and that the competent authorities of the state of origin and state of employment can at any time establish the necessary arrangements to determine the modalities of the application of this norm. In this regard, the Committee refers to the ILO Multilateral Framework on Labour Migration, recommending that state parties to the ICRMW should consider:

[E]ntering into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to regular migrant workers, and, as appropriate, to migrant workers in an irregular situation.⁷⁷

The Committee has also embarked on the preparation of a Joint General Comment with the Committee on the Rights of the Child on the human rights of children in the context of international migration, with the goal of contributing 'to improving the protection of the human rights of children [who] are, in the context of international migration, in a particular situation of vulnerability'.⁷⁸ This General Comment will aim to focus on the human rights situation of a number of categories of children in the context of migration, including children who migrate with their parents who are migrant workers, children born to parents who are migrant workers in transit and destination countries, and children left behind by their parents (or one of them) who have migrated to another country.⁷⁹ The proposed rights' themes to be covered by the General Comment include issues of particular concern to the ILO, such as equality and non-discrimination, the right to health, the right to social security, and the right

Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016 http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf (accessed 26 June 2016). The principle of firewalls in this Recommendation is expressed as follows: 'Taking into account that the practical protection of the human rights of all persons, including those irregularly present within the jurisdiction of member states, requires the strict separation of immigration control and enforcement activities from other state and private services; taking into account that this also requires the creation of firewalls to prevent, both in law and practice, state and private sector actors from effectively denying human rights to irregularly present migrants by clearly prohibiting the sharing of the personal data of, or other information about, migrants suspected of irregular presence or work with the immigration authorities for purposes of immigration control and enforcement' (ECRI General Policy Recommendation 16, 7).

77 General Comment 2 (n 51 above) 18, para 68, citing ILO 'Multilateral framework on labour migration: Non-binding principles and guidelines for a rights-based approach to labour migration' (2006) 18, Guideline 9.9.

78 See CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration: Concept Note, 4 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR%2fCMW%20General%20Comment&Lang=en (accessed 26 June 2016).

79 CMW-CRC Joint General Comment (n 78 above).

to work and protection from forced labour, all forms of exploitation, and child labour.⁸⁰ Considering its role under article 74 of the ICRMW, the ILO, together with a number of other agencies,⁸¹ is also participating in the advisory group, which will support the Working Group comprising 4-5 representatives of each of the two Committees responsible for coordinating the process and overseeing the drafting of the General Comment.⁸²

4.3 Days of general discussion

The Committee has held a number of important days of general discussion with the purpose of drawing attention to the protection of the rights of migrant workers, including certain categories of migrant workers, in various contexts.⁸³

Two of these days of general discussion, on migrant domestic workers in October 2009 and the rights of migrant workers in an irregular situation and members of their families in September 2011, preceded the deliberations and adoption of the two General Comments discussed above.⁸⁴ ILO officials participated in both days and delivered presentations or remarks.⁸⁵ In a half day of general discussion on workplace exploitation and workplace protection commemorating the 10th anniversary of the entry into force of the ICRMW, held in April 2014,⁸⁶ an ILO official also

80 CMW-CRC Joint General Comment (n 78 above) 5-6.

81 CMW-CRC Joint General Comment (n 78 above) 6-7: OHCHR, United Nations Children's Fund (UNICEF), United Nations Educational, Scientific and Cultural Organisation (UNESCO), UNHCR, United Nations Population Fund (UNFPA), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and IOM.

82 CMW-CRC Joint General Comment (n 78 above) 6.

83 For more information, including the agendas and presentations, see <http://www.ohchr.org/EN/HRBodies/CMW/Pages/DiscussionDays.aspx> (accessed 26 June 2016).

84 Indeed, according to the former Secretary of the Committee, the day of general discussion on migrant domestic workers was held in light of the 2010 International Labour Conference discussion on the need for an instrument for the protection of domestic workers, thus confirming the earlier rationale for the General Comment subsequently adopted. See respectively C Edelenbos 'Committee on Migrant Workers and Implementation of the ICRMW' in De Guchteneire et al (n 16 above) 113 & Chetail (n 49 above) and accompanying text.

85 See respectively the presentation by K Landuyt on 'Migrant domestic workers: Coverage under existing international labour standards' <http://www.ohchr.org/EN/HRBodies/CMW/Pages/DGD2009.aspx> (accessed 26 June 2016) and the complementary remarks by R Cholewinski. For the reports of both days of discussion, see <http://www.ohchr.org/EN/HRBodies/CMW/Pages/DGD2009.aspx> (accessed 26 June 2016) and <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11393&LangID=E>.

86 See <http://www.ohchr.org/EN/HRBodies/CMW/Pages/DGD2014.aspx> (accessed 26 June 2016). Earlier, in April 2013, the Committee also held another half day of general discussion on the role of migration statistics for treaty reporting and migration policies. See <http://www.ohchr.org/EN/HRBodies/CMW/Pages/DGD2013.aspx> (accessed 26 June 2016).

gave the keynote address,⁸⁷ which was appropriate given that the issues discussed were of particular relevance and interest to the ILO's mandate. This discussion also included an intervention by the UN Special Rapporteur on the human rights of migrants,⁸⁸ who had previously presented a thematic report to the UN Human Rights Council on the labour exploitation of migrants.⁸⁹ This interaction between a UN Human Rights Council special procedures mandate holder with the Committee and the ILO demonstrates the importance of such days of discussion in building crucial synergies amongst key stakeholders and facilitating coherence in the objective of advancing protection of the rights of migrant workers.

In December 2005, the Committee also held an important half day of general discussion on 'Protecting the rights of all migrant workers as a tool to enhance development' to prepare for the first UN General Assembly High-level Dialogue on International Migration and Development in September 2006.⁹⁰ On the basis of the information and views expressed during this discussion, including by an ILO representative,⁹¹ the Committee adopted a written contribution, discussed subsequently in meetings in April 2006, to the High-level Dialogue, in which it emphasised the positive linkages between ensuring the protection of the rights of migrant workers and sustainable development in both countries of destination and origin.

87 See presentation of Michelle Leighton, Chief, Labour Migration Branch, ILO, <http://www.ohchr.org/Documents/HRBodies/CMW/Discussions/2014/MichelleLeighton.pdf> (accessed 26 June 2016).

88 See Presentation by François Crépeau, UN Special Rapporteur on the human rights of migrants, <http://www.ohchr.org/Documents/HRBodies/CMW/Discussions/2014/FrancoisCrepeau.pdf> (accessed 26 June 2016).

89 'Labour exploitation of migrants', Report of the Special Rapporteur on the human rights of migrants, François Crépeau, HRC (3 April 2014) UN doc A/HRC/26/35 (2014), <http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf> (accessed 26 June 2016).

90 See the summary records of the 25th and 26th meetings of the Committee: CMW/C/SR.25 and CMW/C/SR.26.

91 In offering a summary of the day of discussion during the 26th meeting of the Committee (n 90 above) 7, para 30, the ILO representative, Mr Patrick Taran said that four main principles had emerged: 'Firstly, given that migrant workers were recognized as agents of development, both in their host countries and in their countries of origin, and as human beings and not commodities, the question of migration should be approached from a human rights perspective. Secondly, the contribution of migrants to the economic and social development of their host countries could be evaluated according to the standard of living, working conditions and level of integration of migrant workers ... Thirdly, the way in which migrant workers were treated had a considerable impact on the level and nature of their contribution to the creation of human capital and to the development of their countries of origin. Hence, not properly remunerating a migrant worker deprived not only the migrant worker of the means of subsistence but also his or her country of origin of a source of income. Fourthly, protecting the human rights of all migrants was a legal, political and ethical imperative, and promoting equality of treatment and integration was essential if migration was to contribute in a substantial and positive manner to economic and social development'.

The Committee believes that respect for the rights of all migrant workers and members of their families will strengthen the beneficial effects that migration has on development, both in countries of origin and in countries of employment. Protection of human rights and prevention of discrimination in the country of employment are essential factors to enhance the integration of migrant workers and members of their families, thus enabling them to better contribute to the socio-economic welfare of the country of employment. Adequately upholding economic and social rights in countries of origin will prevent migration from being a forced decision and will enhance the beneficial effects of migration on the development of the country of origin.⁹²

The Committee drew attention to a number of observations and recommendations concerning the need to ensure that migrant workers have access to reliable information on the migration process; adequate regulation of the activities of recruitment and placement agencies; equality in remuneration and conditions of employment; special attention to the protection of the rights of migrant workers, including those in irregular status, and their integration; adequate remedies and access to justice, particularly with a view to being able to claim unpaid wages and social security benefits after they have departed from the destination country; and facilitating migrants' contacts with their countries of origin and reintegration on their return, so as to maximise the contributions they can make to those countries.⁹³

While many of these questions have since been discussed during the principal outcome of that first High-level Dialogue, namely the Global Forum on Migration and Development (GFMD),⁹⁴ the tenth edition of which was held in Berlin in June 2017, it was not until the General Assembly Declaration of the Second High-level Dialogue on International Migration and Development, adopted in October 2013, that the international community explicitly recognised the clear linkages between migration, human rights and development.⁹⁵ In the Declaration, representatives of states and governments also reaffirmed 'the need to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status'.⁹⁶ With

92 Protecting the rights of all migrant workers as a tool to enhance development, Note by the Secretary-General, GA (3 July 2006) UN doc A/61/120 (2006) 3, para 4.

93 Protecting the rights of all migrant workers as a tool to enhance development (n 92 above) 3-7, paras 6-23.

94 See <http://www.gfmd.org/> (accessed 26 June 2016).

95 Declaration of the High-level Dialogue on International Migration and Development, UN General Assembly Resolution 68/4 of 3 October 2013, GA (21 January 2014), UN Doc A/RES/68/4 (2014). In para 1 of the Declaration, the representative states and governments: 'Recognize that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, and in this regard recognize that international migration is a cross-cutting phenomenon that should be addressed in a coherent, comprehensive and balanced manner, integrating development with due regard for social, economic and environmental dimensions and respecting human rights'.

96 Declaration of the High-level Dialogue on International Migration and Development (n 95 above) para 10.

regard to the protection of migrant workers, they emphasised ‘the need to respect and promote international labour standards as appropriate, and respect the rights of migrants in their workplaces’ and ‘the need to establish appropriate measures for the protection of women migrant workers in all sectors, including those involved in domestic work’.⁹⁷

4.4 Other events

The ILO has been a key participant in other events organised by the Committee, not least those commemorating the 20th and 25th anniversaries of the adoption of the Convention. The 25th anniversary event was held on 8 September 2015 during the Committee’s 23rd Session at a time when the highest political attention was being given to migrants and refugees in the context of the so-called ‘refugee and migration crisis’ affecting various parts of the world and particularly the Mediterranean region.⁹⁸ It attracted a large number of participants representing governments, including those that have not ratified the ICRMW, intra-regional bodies such as the European Union (EU), international organisations, trade unions and civil society. The UN High Commissioner for Human Rights observed that the migration crises highlighted the fundamental importance of the ICRMW ‘as a robust and agreed international legal framework for the rights of all migrant workers and their families in countries of origin, transit and destination’ and that ‘after a quarter-century, the Convention was now more relevant than ever’ despite the relatively low number of ratifications. He added that:

[T]he juxtaposition of this landmark twenty-fifth anniversary with today’s dramatic and accelerating migration crises underscored the urgent need to begin a more honest discussion about the obstacles to ratification of the Convention.⁹⁹

In summing up the discussion, the ILO speaker underlined that:

[T]he way forward was a comprehensive approach to governance, based on three pillars: creating decent work at home; multilateral responses needed to be grounded on international standards and common values; and fair, safe

97 Declaration of the High-level Dialogue on International Migration and Development (n 95 above) paras 14 & 12 respectively.

98 The event was entitled ‘Current challenges in protecting the human rights of migrant workers, irregular migration flows in the Mediterranean, migrant workers in the Gulf, and undocumented children in the Americas’, and comprised two panel discussions: (i) ‘Current trends in violations of migrant workers’ human rights’ and (ii) ‘Challenges for states and promising developments in responding to these trends’. For a summary of the discussion, see <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16398&LangID=E> (accessed 15 June 2017 (accessed 26 June 2016)).

99 Zeid Ra’ad Al Hussein, UN High Commissioner for Human Rights (n 98 above).

and regular channels of migration that met real labour market needs at all skill levels.¹⁰⁰

In September 2014, the ILO and the OHCHR also co-organised a side event on ‘Decent Work for Migrant Domestic Workers’ during the Committee’s 21st Session, in the framework of the EU-funded project ‘Global Action Programme on Migrant Domestic Workers’.¹⁰¹ The focus of the panel discussion was the exchange of good practices and to promote migrant domestic workers’ empowerment through improvement of their legal protection, access to justice and enhancement of their organisation and voice. Specific attention was also given to the relationship between relevant international standards, namely the ICRMW and ILO Conventions Nos 97, 143 and 189.

5 Conclusion

The fundamental connection between international human rights and labour standards is clearly evident when it comes to the protection of migrant workers and the governance of labour migration, both in the interplay between the ICRMW and ILO international labour standards, including the specific ILO instruments on migrant workers, and between the ILO supervisory system, in particular the ILO Committee of Experts, and the UN Committee of Migrant Workers, which is facilitated by ILO officials who participate in a consultative capacity in the work of the Committee.

Contrary to the concerns expressed by certain governments and ILO officials at the time of the drafting of the ICRMW,¹⁰² the interaction between ILO representatives and members of the Committee is resulting in a heightened understanding of the role of both systems in protecting migrant workers and improving the governance of labour migration, including in the identification of good practices that can be shared across regions and globally. It is also leading to improved synergies and more consistent approaches to interpretation of key rights’ areas, such as the rights to freedom of association and equality of treatment, and their application to all migrant workers, including those in irregular status.

Importantly, the Committee, through its deliberations on state party reports and General Comments, and particularly through its days of

100 Manuela Tomei, Director, Conditions of Work and Equality Department (WORKQUALITY), ILO (n 98 above).

101 For the press release, see http://www.ilo.org/global/docs/WCMS_310260/lang-en/index.htm (accessed 26 June 2016). For more information about the project, see http://www.ilo.org/global/topics/labour-migration/projects/WCMS_222567/lang-en/index.htm (accessed 26 June 2016).

102 See V Chetail (n 49 above) 18, who observes that ‘despite the concerns initially raised, the collaboration [between ILO representatives and members of the Committee] has proved to be particularly fruitful since the establishment of the [Committee]’.

general discussion and other relevant events, which are open to and inclusive of all interested stakeholders – such as governments, national human rights institutions, trade unions, the private sector, NGOs and migrant associations – presents an increasingly important forum allowing for a transparent and focused exchange on the interdependence of migration, human rights and development. This should be contrasted with the more rhetorical, less technical and often politicised discussions taking place within the GFMD and other largely intergovernmental spaces, where the relationship between migration, human rights and development and the role international standards can play in strengthening this relationship is often understated or subsumed by economic considerations. With the explicit integration of human rights and migration into the new global development agenda and the recognition of the protection of the labour rights of all workers, including migrant workers, as a target in SDG 8 on economic growth and decent work, undertaking efforts to reinvigorate the rights-based approach to migration and development would be most timely. The ICRMW and ILO international labour standards, together with their respective supervisory systems, have an important role to play in this endeavour.