SIHMA/CPLO Seminar #3 – 3 September 2014

Towards a regional integrated migration regime: A future perspective

The Townhouse Hotel, Cape Town

Presenters: Luca Marin (Centre for Study on International Migration, Paris)

Roni Amit (African Centre for Migration and Society, University of the Witwatersrand)

Christopher Nshimbi (Centre for the Study of Governance Innovation, University of Pretoria)

Moderator: Father Peter-John Pearson (Catholic Parliamentary Liaison Office)

Introduction

Fr. Peter-John Pearson opened the seminar and welcomed all participants. He provided some background to the Catholic Parliamentary Liaison Office (CPLO) and the partnership with the Scalabrini Institute of Human Mobility in Africa (SIHMA) on the seminar series on migration and asylum.

Fr. Peter-John mentioned that the meeting will take place under Chatham House rules. The presentations made will be ascribed to the relevant speaker, whereas the discussion after will be captured generally and not ascribed to individuals. This allows for the freedom of interaction and commentary by the participants.

Presentations

Luca Marin

Luca Marin provided a historical summary of migration in Europe and the European Union (EU). This started with a review of the various wars that have taken place in Europe and the effect that these have had on the movement of people. It was explained that the focus of the various wars have narrowed from that of empires versus nation states (World War One) to inter-state war (World War Two). After World War Two, there was a rise of nationalism in Europe and an increased sense of national identity. Luca also shared that it was in the context of the Cold War, which was an ideological or philosophical war, that the 1951 Refugee Convention was developed and saw refugees as people coming from the East, escaping communism. They were seen as heroes that should be welcomed.

The period from 1950-65 in Europe was filled with idealistic optimism because of economic growth. There were ideas around liberating mankind and creating a united Europe and world. It was expected that all people would contribute willingly to the idea of a united continent. A period of living freely and moving freely was envisaged. This way of living was also seen in Latin America after liberation from Spanish and Portuguese rule. However, Europe struggled with promoting this concept as there were some differences experienced amongst various populations and cultures. Aggravations and struggles have started which are evident at the level of inter-regional / cultural. Various regions want to be independent of nation states. A delineation of empire to nation state to region is taking place

which is a further narrowing in the level of identity and relationship. Europe and Europeans are becoming very insular in the concept of foreign.

The perceptions of the European Union is that it is a solid economic block, whereas the internal experiences are very different. Marin, mentioned that there is an increasing xenophobia in Europe, especially towards populations of people who are poor, and seen not to contribute to the economy in a monetary way. Economic migrants are seen to bring criminal elements to the community, or partake in such activities. Migrants are also viewed as taking jobs from the local community / work force.

With the borders becoming more fluid there is no national identity that can be fixed, or agreed upon. There are however prevailing perceptions on national identities and qualities of people coming from particular countries. Certain attributes, positive and negative have been attached to immigrants from particular countries. For instance in France people from Italy are seen as good but they don't work well. An evaluation of foreigners have been developed by politicians, which classifies immigrants into different degrees of foreigners. This includes people from different regions of the same country. Various criteria are used to determine the classification such as language, religion and race. Marin gave the example of should a white person from Iceland move to Spain they would be welcomed over a Latin American coloured person who speaks the language and has some aspects of the culture, this is based on the racial distinction of classification of the immigrant.

The practice in reality seems different to the policy that the EU has developed. The EU defines itself as a space of freedom, safety and justice:

Freedom – the ideas of democracy, freedom of movement and circulation of people in Europe, circulation of money and goods inside of Europe. This also relates to the gender equality and equality before the law.

Safety (security) - Police of the nation, terrorist policies and structures to protect the EU. Many European states take the attitude of "not to be bothered", and have an insular approach to security.

Justice – which is seen as an equity of duties and rights. This is more than often translated into meritocracy. Those who deserve can have and people who don't deserve cannot have. For an immigrant entering an EU state there is an agreement that that person needs to sign an agreement with the state. After signing this document the person is then considered to be integrated into the EU. Should there be a transgression of the agreement, by the immigrant, then the person will be 'expelled' from the EU.

The repatriation of the person is not always to their home country as there have been cases where people have been sent to countries that are in no way related to the person or even close to the country of origin. There are bilateral agreements around the deportation of people. Irregular migrants can be returned to any country, even if they are not from that country. There have been some instances where Brazilians have been sent to Angola, and South Sudanese people to the Congo. It seems as though as long as the person is outside of the EU borders that is all that matters.

The European Union and individual countries have put in place a number of policies and practices to discourage the movement of people into the EU or countries within Europe. These range from bilateral agreements with sending states, which are often linked with development money / aid, to information networks between consulates to provide notifications on the movement of certain people deemed undesirable. There has also been the externalisation of the procedures of immigration and asylum. This means that people are now getting 'processed' outside of the European borders. Incentives are

given to these 'guardian states' which include development money as well as inclusion into the EU particularly for countries bordering the EU. Libya and Poland have played these roles in the past. More information on the agreements with these countries and others through the European Neighbourhood Policy can be accessed on the website http://eeas.europa.eu/enp/index_en.htm. In addition, the agencies that are used to control immigration at the borders have been outsourced. This action provides a protection to governments from taking responsibility for any transgressions of international law on management of migration and people.

In closing Luca reflected that the organisation of migration in Europe is disorganised on purpose in order to discourage migration to Europe. The ill-managed migration centres and lack of assistance and services to migrants furthers the agenda to discourage immigration to the region.

Roni Amit

Roni Amit's slide presentation gave a comprehensive overview of the regional approach to labour migration and the effects it would have on the asylum system. The presentation focused on migration management; easing pressure on the asylum system; and the effects on regional labour and the concept of the ''first safe country'' of asylum.

It was noted that South Africa is no longer the top regional destination for asylum seekers. And that the ineffective management system of asylum seekers is feeding the narrative that 90% of asylum seekers are economic migrants. The recent statistics that have been released show that although there are five Southern African Development Community (SADC) countries still with high numbers of asylum seekers there have been a decrease in numbers recorded. The numbers of asylum seekers in SADC countries has decreased from 64 % to 49 %. In addition the 2013 figures show that 51% of asylum seekers were not from the SADC region. It is important to remember that not all the migrants in SADC are economically motivated.

The use of the first safe country principle has been problematic in South Africa. Roni attempted to dispel some of the myths in her presentation. As a starting point she mentioned that the first safe country principle is not a recognised principle of international law. It is a practice that has been developed by states to allocate their obligations. It has become an administrative process which may end up placing more burden on the destination country. According to the international legal framework there is no requirement placed on refugees to seek refuge in the first safe country. The African Union Convention makes it clear that states cannot turn someone away if they have transited through another country. For a practice to be seen as a customary norm it needs to be practiced consistently and widely. There is no evidence of consistent practice of countries to request protection of the first safe country principle. Roni clearly stated that neither treaty nor customary international law supports South Africa's view that countries are bound under international law to enforce a first safe country principle. A country cannot instruct an asylum seeker at their border to go back to the country that they transitioned through. There needs to be an investigation done on the conditions in that country and how it will impact on the person's life and safety, the risk of *refoulement* needs to be determined before a decision can be made. It is important to review each case on an individual basis. In addition the middle country can still be held accountable for the *refoulement* of an individual in a third 'safe' country.

In closing Roni left the participants with the following two points to consider 1) for the free movement of people to become a viable reality, SADC regional labour agreements need to be extended beyond

the region for it to be effective; 2) is the first safe country principle being used as an immigration control for the state to be able to achieve their immigration goals?

<u>Christopher Nshimbi</u>

Chris started off his presentation quoting the current UNHCR report that indicates the world has the highest level of refugees and asylum seekers ever recorded in history. There were 29.2 million migrants in Africa in 2010, the majority of whom made other African countries their final destination country.

The work being presented is part of ongoing research done by MiWORC, the Migration for Work Research Consortium, which is an inter-disciplinary and multi-organisational consortium looking at migration and work. The report 'A region without borders? Policy frameworks for regional labour migration towards South Africa' provides an in depth look at labour migration at the global and regional levels and particularly in Africa, with an emphasis on the Southern African Development Community (SADC). The research investigates existing policies and related similar bilateral or regional frameworks pertaining to labour migration and, in particular, labour migration originating from Namibia, Botswana, Lesotho, Swaziland, Zimbabwe, Mozambique, and Malawi and directed towards South Africa; and to analyse South Africa's 'migration' policy responses to inflows of migrants from the 7 countries mentioned.

Migration has been seen as a security issue since the increase in terror attacks such as 9/11, with a resultant tightening on the management of migration and cross-border movement. However, placing too much restrictions on cross-border movement can result in more risk-taking with regards to migration and an increase in the number of undocumented migrants in a country. The increase of irregular migrants becomes an issue for countries as there is a lowering in labour standards and workers' rights for all, as wages start to be undercut. There is also a burden placed on the social services that are proved to migrants. There needs to be a collaborative and coherent approach to policy making on the free movement of people in the region, which is not done on an ad hoc basis. The policy development should be undertaken by representatives from a cross-section of departments and sectors, for example: social development; home affairs; health; police; treasury; education and labour.

A free trade area has been established in SADC, the movement of labour is of interest to researchers and policy makers especially around how integrated the freedom of movement of labour is, as in reality it does not seem that free. How does one more successfully govern migration at a global level as the movement of people, and management thereof impacts sending and receiving countries. There is no specific international organisation that is designed to manage migration. However, it is spread out at three levels amongst countries and regions through formal multi-lateral agreements; international principles as well as information networks. There are various bilateral labour migration agreements present in the region, with South Africa engaging in many of them. South Africa has individual agreements with all the countries in the MiWORC study mentioned which gives it the upper hand in the debate on labour migration. However, the presence of bilateral labour agreements between individual countries is detrimental to a uniformed united agreement on the free movement of people. Bilateral agreements have set up parallel migration system that impacts the prospects of having a regional migration legislation. Labour migration bilateral agreements should be discouraged as they dampen a regional framework and achieving regional goals.

In conclusion Chris reiterated that labour migration is historical for the region, and that there is also a historic component to regionalism in southern Africa. The borders in the region are very porous which fosters informal movement, as well as random repatriations. It would be beneficial to the region if an agreement is made on undocumented migrants which would grant them work rights and residence in host member states. It was emphasised that SADC member states should look at aligning and harmonising their policies with regards to labour migration, and should essentially formalise a regional integration migration system. A key driver for this process is the Southern African Customs Union (SACU), which would ideally institute a singular standardised memorandum of understanding to be used to inform trade and labour agreements amongst countries in the union. In addition it is essential that the SADC Protocol on Facilitation of Movement of Persons be signed and ratified.

The proposed method to ensure free movement within the region would be a three tiered approach starting at the SACU level where free movement and no travel restrictions are imposed. This will then be ramped up to the SADC level where countries are able to opt into the SACU framework on labour movement. Finally business people from within the countries of the tri-partite agreements *inter alia* COMESA and ECOWAS will be free to move around, this can then be expanded to other people. A positive step towards regional labour migration has been the recent signature in August of the Protocol on Employment and Labour as well as the Migration Policy Framework for Africa. While there is movement around these issues at the regional level the progress is slow and incremental.

Closing

Fr Peter-John thanked the presenters and participants for the discussions.