



International Labour Office

***International Conventions on Migration:
Ensuring Regulation under the Rule of Law***

**A presentation for the
EUROPEAN ECONOMIC AND SOCIAL COMMITTEE
HEARING:
INTERNATIONAL CONVENTION ON PROTECTION OF MIGRANTS RIGHTS
Brussels,
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It is an honour to be invited to share views reflecting concerns of the International Labour Office on the matter of this hearing. This presentation also draws on my own 27 years of professional experience in the field of migration and 14 years work directly involved in following, analysing and promoting the 1990 International Convention on protection of rights of migrant workers.

This paper focuses on three main points:

- 1) migration and immigration are now integral features of European economic and social dynamics, and will be more so in the future.
- 2) As with other complex social phenomena, migration requires regulation by government to ensure benefits for stakeholders, avoid abuse of individuals, and ensure social cohesion.
- 3) The 1990 International Convention provides a comprehensive set of legislation-ready provisions required for effective regulation of migration under the rule of law.

Migration key to Europe's future

In general, it is understood that labour mobility –its freedom to move—is required to ensure that labour is available where needed and to ensure its most productive use.

In globalized capital markets and liberalized trade regimes, migration plays an important role in redistribution of both costs and earnings; migration remittances provide some compensation – albeit small-- for widening inequalities between countries and regions.

Migration in Europe and elsewhere has become a key feature in meeting economic, labour market and productivity challenges in a globalized economy. Migration today serves as an instrument to adjust the skills, age and sectoral composition of national labour markets, and of regional labour markets. Migration provides responses to fast-changing needs for skills and personnel resulting from technological advances, changes in market conditions and industrial transformations. In countries of aging populations, migration offers a potential role in replenishing declining work

forces, as well as in injecting younger workers, potentially increasing dynamism, innovation and mobility in work forces.

By contrast, restrictions on labour mobility serve to enhance inefficiencies and widening inequalities. When combined with measures or lack of measures that effectively inhibit protection of migrant workers rights, the consequence is rampant exploitation and abuse of individuals, and sooner or later, breakdowns in social cohesion.

The International Labour Office has just run a simulation using the methodology of its actuarial section used over the last ten years to predict –reasonably accurately-- evolution of performance of social security systems. This simulation carried forward calculations to the year 2050 based on a presumed continuity of current trends including population growth decline, retirement age, female workforce participation rates, immigration numbers, and evolution of economic growth and productivity rates. The result is an estimation that the standard of living of Western Europe, as measured by per capita income of gross national products, will be 78% of what it is today. That is to say, 22% lower.¹

Immigration clearly emerges as one of the components –one among a number of measures—that will need to be adopted to ensure a reasonably stable future assuring general welfare for Europe and its peoples.

Regulatory Foundation

The long experience of the ILO in this and other fields has clearly demonstrated that a basic foundation of regulation is required to manage capital-labour relations in general and specific features such as labour migration. Governance, policies and administration of phenomena that affect economic performance, industrial relations and social cohesion require a foundation in the rule of law to ensure credibility, accountability and enforceability.

The current experience with migration in Europe—and evidence of widespread abuses of migrant workers-- reinforces the notions that firstly, this arena of economic and social relations can neither be left solely to market forces to regulate, and secondly, existing legal regulation is inadequate to the task in a number of countries.

Several recent studies have reconfirmed that a broad and extensive body of international law already exists applying to international migration, most of which directly affects treatment of non-nationals. ILO colleagues agree with a general conclusion that by-en-large, there exists sufficient normative basis for governance of migration and protection of non-nationals. The challenge is one of implementation, not elaboration. The report of the Special Rapporteur on Rights of Non-Nationals more extensively described much of the relevant international jurisprudence.

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Three fundamental notions characterize the protections in international law for migrant workers and members of their families.

1. Equality of treatment between regular migrant/immigrant workers and nationals in the realm of employment and work.
2. Core universal human rights apply to all migrants, regardless of status. This was established implicitly and unrestrictedly in ILO Convention 143 of 1975 and later delineated explicitly in the 1990 Convention.
3. The broad array of international standards providing protection in treatment and conditions at work –safety, health, maximum hours, minimum remuneration, non-discrimination, freedom of association, maternity, etc.—apply to all workers. This notion was most recently upheld in a recent Opinion issued by the Inter-American Court.

Three complementary and sequential international standards provide core definitions of rights of non-nationals, as well as establishing basic principles for coherent migration policies. These are the ILO Migration for Employment Convention, 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the 1990 UN [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#).²

ILO Convention 97 provides the foundations for equal treatment between nationals and regular migrants in areas such as recruitment procedures, living and working conditions, access to justice, tax and social security regulations. The two main objectives of ILO Convention 143 are to regulate migration flows, eliminate clandestine migration and combat trafficking and smuggling activities; and to facilitate integration of migrants in host societies. This instrument provides specific guidance regarding treatment of irregular migration.

The 1990 International Convention

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families extended the legal framework for migration, treatment of migrants, and prevention of exploitation and irregular migration. The content of ILO Conventions 97 and 143 formed the basis for drafting the UN Convention, which expanded and extended recognition of economic, social, cultural and civil rights of migrant workers rights. This Convention has been characterized as one of the seven fundamental human rights instruments that define basic, universal human rights and ensure their explicit extension to vulnerable groups world-wide.³

² Texts and related information available respectively on the ILO website, at www.ilo.org/ilolex and on that of the Office of the UN High Commissioner for Human Rights, www.unhchr.ch.

³ Noted in the Report of the (UN) Secretary General on the Status of the UN Convention on migrants rights for the 55th Session of the UN General Assembly. Doc. A/55/205. July 2000. The other six are the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention for the Elimination of Racism and Racial Discrimination (CERD), Convention Against Torture (CAT), Convention for the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Texts and status of these conventions available on the website of the Office of the UN High Commissioner for Human Rights: www.unhchr.ch

Eight points indicate the importance of this Convention:

1 The Convention establishes a comprehensive “values-based” definition and legal basis for national policy and practice regarding non-national migrant workers and their family members. It thus serves as a tool to encourage States to establish or improve national legislation in harmony with international standards.

2 It lays out a comprehensive agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc.

3 It establishes that migrant workers are more than labourers or economic entities; they are social entities with families and accordingly have rights. It reinforces the principles in ILO migrant worker Conventions on equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.

4 The 1990 Convention includes provisions intended to prevent and eliminate exploitation of migrants, thus reinforcing the ILO conventions’ ‘decent work’ agenda.

5 It expands on provisions in ILO conventions addressing unauthorized or clandestine movements of migrant workers, and regarding resolving irregular or undocumented situations, in particular through international cooperation.

6. The Convention resolves the lacuna of protection for non-national migrant workers and members of their families in irregular status and in informal work by providing norms for national legislation of receiving states and their own states of origin, including minimum protections for undocumented or unauthorized migrant workers.

7 While the Convention addresses migrant workers and family members, implementation of its provisions would provide a significant measure of protection for other migrants in vulnerable situations, such as victims of trafficking.

8 The Convention’s extensive and detailed text provides specific normative language that can be incorporated directly into national legislation, reducing ambiguities in interpretation and implementation across diverse political, legal and cultural contexts.

As noted in the just issued ILO Report on International Labour Migration prepared for the upcoming International Labour Conference at which labour migration is the topic of the General Discussion:

The ILO and UN instruments are similar in scope, although the UN Convention’s definitions of “migrant worker” and “family” are somewhat broader than the ILO’s. (The UN Convention also covers frontier workers and, in certain respects, self-employed migrant workers.) As with UN conventions relating to the rights of women, children and the victims of racism, the Convention on migrant workers sought to extend protection of universal

rights to vulnerable groups by providing explicit normative language suitable for national legislation.⁴

A total of 65 different States have now ratified one or more of these three instruments. The ILO Migration for Employment Convention No. 97 of 1949, is ratified by 42 countries, the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975 is ratified by 18 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ratified by 25 countries and signed by 9 others.

I emphasize in this European Union context two aspects deriving from this record. Eleven member States of the EU today --ten of the fifteen members prior to the May 1 expansion-- have ratified one or both of the ILO instruments just cited. That is to say that a number of elements of national law and practice on migration are based on and conform to relevant international standards in a considerable number of EU member States. At the same time, recent studies in certain Western European countries have ascertained that current national legislation --in part based on earlier ratification of ILO standards-- is already largely in conformity with the broader standards contained in the 1990 UN Convention.

In this context, it is certainly appropriate to call on European Union member states to ratify and implement the 1990 International Convention on protection of migrant workers, to serve as a necessary and appropriate foundation for national and Community policy and practice on migration governed by the rule of law.

The initiative of the European Economic and Social Committee to adopt a structured position on immigration/migration policy, based on respect for human rights merits strong support. This initiative coincides with proposals put forward to the International Labour Conference in June towards elaborating:

“A rights-based international regime for managing migration must rest on a framework of principles of good governance developed and implemented by the international community that are acceptable to all and can serve as the basis for cooperative multilateral action. Existing international Conventions defining the rights of migrant workers provide many of the needed principles, but a sound framework would have to include principles on how to organize more orderly forms of migration that benefit all.⁵

We look forward to further collaboration with this Committee in the critical field of migration.

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⁴ ILO. Executive Summary: *Towards a Fair Deal for Migrant Workers in the Global Economy*. (International Labour Conference 92nd Session June 2004. Report VI.)

⁵ *ibid*

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