

The International Labour Organisation and the New International Order:

The Dilemma Between Control and Rights

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INTRODUCTION

This paper aims at reconstructing and analysing the origins of the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, adopted by the International Labour Organization (ILO) in Geneva on 24 June 1975. The document is generally considered, together with the Migration for Employment Convention in 1949, as the most significant outcome of the ILO legislative activity in the migration policy field during the Cold War period: its preparation, discussion and contents well show the ILO's ambitions as to migration governance and the obstacles it met in the turning point between the late 1960s and mid-1970s.

The work, which is based on literature, published documents from the ILO institutions and primary sources from the Historical Archives of the ILO in Geneva, is structured into four parts. The first analyses the period between 1919, when the ILO was established, and 1939, when the Second World War broke out: it shortly examines the debates and initiatives taken within the Organisation, emphasising the main external and internal constraints that limited its action in the interwar period. The second part deals with the period between the end of the Second World War in 1945 and the fifty-sixth session of the International Labour Conference (ILC) in 1971, when, in the midst of an early change in the international migration conditions, the ILO made a last attempt to relaunch its own initiative after two decades of gradual "retreat". The third part examines the period between 1971 and 1974, when the first round of discussions on the new instrument was conducted: this was a crucial phase, since a series of distinct but intertwined economic and political dynamics led to a radical shift of attitudes and priorities in both sending and receiving countries. The fourth part, finally, deals with the adoption and contents of the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

I. A TROUBLED BEGINNING (1919-1939)

To date, there is no work that covers the ILO's efforts in the field of labour migration in a systematic and comprehensive manner¹. That said, it is true that, since its inception, the ILO was engaged with migrants and, later on, refugees as well; it is also true that, in the period between the aftermath of the First World War and the end of the Second World War, it was the main international organisation dealing with these matters.

While the Russian Revolution put pressure on liberal governments to create an international organisation aimed at improving and regulating working conditions, so dampening popular support for communism, the First World War gave organized labour unprecedented moral and political strength. Against this backdrop, the International Labour Organisation was created with the mandate of protecting trade unions' and workers' rights at international level.

Although migration was not central to the Organisation's scope, the Constitution of the ILO, adopted by the Peace Conference on 1 April 1919, mentioned the «protection of the interests of workers when employed in countries other than their own» in its preamble². As it became soon clear, however, this objective was not easy to be accomplished. France was interested in involving the ILO in its foreign labour recruitment policies; labour supplying countries, meanwhile, were willing to use the ILO to regulate international migration and give protection to their citizens living and working abroad. At the same time, important immigration countries, including Canada and Great Britain, were opposed to give significant powers on migration to the ILO, fearing that this could undermine their sovereignty and restrictive attitudes to immigration; according to them, the International Labour Organisation should limit to collecting data and conducting studies on migration, without setting common standards or regulating the international migration regime.

As a consequence of this political stalemate, there were narrow margins for the ILO to search and find an effective role. At an early stage, the conventions and recommendations mentioning migrants defined standards in vague terms, concentrated on very specific areas of social security and emphasised the condition of reciprocity³. Despite the establishment of an International Emigration Commission in 1920, whose main aim was to prepare and present proposals to organise international

¹ Jasmien Van Daele, "Writing ILO Histories: A State of the Art", in Jasmien Van Daele, Magaly Rodríguez García, Geert Van Goethem, Marcel van der Linden, *ILO Histories. Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century*, Bern, Peter Lang, 2010, pp. 13-40.

² International Labour Organisation, *Constitution of the International Labour Organisation*, 1/4/1919.

³ International Labour Organisation, *Convention concerning Unemployment*, Washington, 28/11/1919; International Labour Organisation, *Recommendation concerning Unemployment*, Washington, 28/11/1919; International Labour Organisation, *Convention concerning Reciprocity of Treatment*, Washington, 28/11/1919.

labour movements, the standard setting activities of the ILO remained limited both in contents and impact⁴.

Things seemed to change only in the mid-1920s. At that time, a new generation of bilateral agreements, characterised by provisions on both recruitment and living and working conditions of migrant workers, was emerging and proliferating. While it was aware that this represented a step forward in the protection of migrants, the International Emigration Commission was also convinced that the best way to protect migrant workers was to adopt international measures addressed to all countries and guaranteed by conventions. Meanwhile, emigration countries within the ILO were disappointed with the inability of bilateral agreements to adapt to the constant changes in migration flows and to give proper social protection to migrant workers, especially when transiting through third states. A first International Conference on Emigration and Immigration was organised in Rome in 1924 to agree on a mechanism to reconcile the interests of recruiting and supplying countries and the needs of foreign and domestic workers. The second International Conference on Emigration and Immigration meeting in Havana in 1928, similarly, explicitly advocated for increased international coordination and standard setting. Faced with this request, the Director-General of the ILO, Albert Thomas, made the proposal for a system of organised recruitment and placement of migrant workers and the codification of a model labour contract at international level.

In the meantime, the ILO was confronted with a similar mixture of opportunities and challenges in the field of refugees⁵. The First World War and the ensuing collapse of the Austro-Hungarian, Ottoman and Russian empires had forced people to leave their homes on a hitherto unprecedented scale. In the receiving countries, themselves struggling with political and economic tensions, they often met with hostility and were perceived as a threat. Against this backdrop, the League of Nations High Commissioner for Refugees, the Norwegian Fridtjof Nansen, asked the ILO for help. In 1924, Nansen proposed to transfer the services of the High Commissioner to the ILO, which had both the structures and the resources which he needed but lacked. In addition, the partial transfer of the refugee question to the ILO was a way for Nansen to get rid of the political problems associated with the shift from repatriation to resettlement⁶.

⁴ International Labour Organisation, *Recommendation concerning Communication to the International Labour Office of Statistical and Other Information regarding Emigration, Immigration and the Repatriation and Transit of Emigrants*, Geneva, 02/11/1922; International Labour Organisation, *Convention concerning the Simplification of the Inspection of Emigrants on Board Ship*, Geneva, 05/06/1926; *Recommendation concerning the Protection of Emigrant Women and Girls on Board Ship*, Geneva, 05/06/1926.

⁵ Daniel Maul, *The International Labour Organization. 100 Years of Global Social Policy*, Berlin, Walter de Gruyter GmbH, 2019, pp. 63-65. See also: Yann Stricker, "International Migration between Empire and Nation. The Statistical Construction of an Ambiguous Global Category in the International Labour Office in the 1920s", *Ethnicities*, N. 3, 2019, pp. 469-485.

⁶ Dzovinar Kévonian, "Enjeux de catégorisations et migrations internationales. Le Bureau International du Travail et les réfugiés (1925-1929)", *Revue européenne des migrations internationales*, N. 3, 2005, pp. 95-124.

After discussions in the ILO's Governing Body, the High Commissioner's staff was assigned to the International Labour Office, where a Refugee Service and a special Committee on Refugees were established in 1925 and 1926 respectively. The League maintained the political responsibility for refugees. The ILO was charged with their transfer, accommodation and employment, especially as far as Russians and Armenians were concerned⁷.

The ILO's work on refugees produced mixed results. Between the mid- and late 1920s, the International Labour Organisation relocated no more than 50,000 refugees; most of them were settled in France, which then needed foreign manpower, or in territories under French mandate. In addition to facing difficulties with finding destinations, the ILO could help only restricted categories of persons: while it was able to find employment for industrial and, to a lesser degree, agricultural workers, in particular, it was generally unable to help white-collar workers and do much for people outside its mandate, including non-active persons.

Since its inception, the ILO's commitment to refugees met with criticism within the Governing Body since many of its members wanted that it remained temporary. Most states, in addition, wanted to retain full sovereignty over the refugee issue and opposed the ILO's work on resettlement since this was considered to fall beyond the Organisation's mandate. Under this pressure, in 1928, Director-General Thomas proposed to give the functions of the Refugee Service back to the High Commissioner for Refugees, which happened in 1929⁸.

The Great Depression between the late 1920s and early 1930s led to a rapid and large decrease in international migration flows; in the context of deteriorating economic conditions and increasing unemployment rates, demand for foreign labour crumbled and opposition to immigration strengthened in all countries⁹. Meanwhile, emigration countries became more reluctant to export their manpower, considering it as a valuable asset to pursue economic and political goals. This, of course, further reduced the chances for the ILO to play a central role in regulating international migration and setting common standards.

However, relying of its previous experience and receiving a fundamental stimulus from the United States entry into the ILO in 1934, the Organisation made an effort to internationalise the debate and management of migration, especially by conducting statistical research and developing a scheme for an international agency: the aim of this body should be that of orienting workers from regions

⁷ Edita Gzoyan, "The League of Nations and Armenian Refugees. The Formation of the Armenian Diaspora in Syria", *Central and Eastern European Review*, N. 8, 2014, pp. 84-102.

⁸ Claudena Skran, *Refugees in Interwar Europe. The Emergence of a Regime*, Oxford, Oxford University Press, 1995, pp. 185-225.

⁹ Paul-André Rosental, "Géopolitique et Etat-providence. Le BIT et la politique mondiale des migrations dans l'entre-deux-guerres", *Annales Histoire Sciences Sociales*, N. 1, 2006, pp. 99-134. See also: W. R. Böhnig, "The ILO and Contemporary International Economic Migration", *International Migration Review*, N. 2, 1976, pp. 147-156.

with a labour surplus to those with shortages. Most countries, however, were reluctant to give an international agency the task of deciding on access to national labour markets and preferred to confirm or introduce quotas to limit labour immigration. Workers' representatives within the ILO, too, were skeptical about this plan because trade unions in receiving countries were concerned with the protection of national labour force against foreign competition¹⁰.

This was the political climate in which the International Labour Conference meeting in 1939 adopted the Migration for Employment Convention and the Migration for Employment Recommendations¹¹. The main members of the ILO were then not only reluctant to accept labour migrants but also opposed to the entry of refugees, especially the masses of refugees which were escaping strengthened Nazi persecution: potential receiving countries feared that their acceptance might further deteriorate domestic employment situations and exacerbate xenophobic sentiments, antisemitic sentiments in particular¹². The Migration for Employment Convention was the first international instrument containing a comprehensive set of common standards on migration; it also established the Permanent Migration Committee to assist the ILO in carrying forward the work on migration. Unsurprisingly, however, the Convention only focused on labour migrants, and put aside the most ambitious plans to transform the ILO into an international clearing house for labour migration. It was never ratified by any country and never came into force.

II. THE FAILURE OF A RENEWED ATTEMPT (1945-1971)

After the end of the Second World War, the ILO started again to deal with migration, not least because of a difficult and imbalanced employment situation at international level. The return to civilian life of millions of soldiers increased existing labour surpluses in many European countries, while millions of displaced persons, often unable or unwilling to return to their countries of origin, were unable to find a job in the places where they were temporarily gathered, especially in Austria and Germany. The conflict, too, contributed to create or further aggravate the socioeconomic problems of important countries in Southern and Central-Eastern Europe and Southern Asia. At the same time, there was great demand for labour in Australia and Latin America, which needed additional workforce to reconstruct civilian and industrial infrastructures and relaunch agricultural production.

¹⁰ Antony Alcock, *History of the International Labor Organization*, London, Palgrave Macmillan, 1971, pp. 71–74.

¹¹ International Labour Organisation, *Convention concerning the Recruitment, Placing and Conditions of Labour of Migrants for Employment*, Geneva, 28/6/1939. See also: International Labour Organisation, *Convention concerning the Recruitment, Placing and Conditions of Labour of Migrants for Employment*, Geneva, 28/6/1939; International Labour Organisation, *Convention concerning Co-operation between States relating to the Recruitment, Placing and Conditions of Labour of Migrants for Employment*, Geneva, 28/6/1939.

¹² Peter Gatrell, *The Making of the Modern Refugee*, Oxford, Oxford University Press, 2013, p. 77.

Against this backdrop, the new Director-General of the ILO, David Abner Morse, took the initiative in renewing the interwar ambitions to make the ILO the central international organisation for the study and regulation of migration. It was true, in fact, that the International Labour Organisation was no longer the only international organisation interested in the migration issue. The United Nations Relief and Rehabilitation Administration (UNRRA) and later the International Refugee Organisation (IRO) took care of displaced persons. The United Nations (UN), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Food and Agriculture Organization (FAO) and the World Bank were involved to different extents in the migration debate too. However, the ILO was the only international organisation with previous experience in this policy area; also, it was the international organisation that was most willing to play a leading role in it. While the United Nations assumed the competence as to rights and conditions of migrants in their quality of aliens, in 1947 the ILO was given power over rights and conditions of migrants as workers. One year later, in 1948, the Organisation for European Economic Cooperation (OEEC) supported the idea to give the ILO an important role in international manpower policies and coordination of labour migration.

However, despite a series of encouraging field missions in both potential emigration countries in Europe and potential immigration countries in South America, the ILO was unable to impose itself as a pillar of the postwar international migration regime. A small group of emigration countries led by Italy supported ILO's ambitions, but a majority of member states staunchly opposed them. Both the countries that wanted to maintain restrictive immigration policies and those that decided to actively recruit foreign workers did not want to give up sovereignty in such a sensitive policy area; trade unions in receiving countries, too, were concerned that massive labour migration could undermine their power and negatively affect domestic workers' conditions.

The situation appeared paradoxical and somewhat contradictory. On the one hand, most governments, employers' associations and trade unions expressed formal support for coordination of migration policies at international level, considering it as a fundamental prerequisite to the reconstruction of world economy. Meanwhile they recognised that the ILO was the natural candidate for this role, due to its global and tripartite membership, its longstanding experience and its competence in that policy area. On the other, with very few exceptions, neither governments nor social actors were ready to give up their powers in this delicate matter.

The rapid escalation of the East-West conflict contributed to further undermine the ILO's chances to play a regulatory role on migration. In 1949 the International Labour Conference adopted the Migration for Employment Convention and the Migration for Employment Recommendation: the aim was to revise the documents adopted by the ILC ten years earlier. Concerned with technical

aspects concerning migration and the treatment of migrants as to salaries, working time, and training, the new Migration for Employment Convention provided a more detailed set of standards, giving a more flexible response to the needs of migrant workers. At the same time, it certified the ILO's failure to acquire significant powers in regulating international labour migration¹³.

A definitive confirmation of this trend came two years later, in 1951, when the International Migration Conference meeting in Naples made a more ambitious attempt to integrate standard-setting activities with more operational tasks. Under pressure from Director-General Morse and with great support from the host country, the International Labour Office developed and submitted a proposal for a Migration Administration, whose aim should be to balance the needs of countries with labour surpluses with those of countries lacking technical know-how and manpower. The international situation, however, did not help. In the context of more and more tense bipolar relations, the United States and all its main Western allies were strongly opposed to give significant additional resources and powers to an organisation which included communist countries, Czechoslovakia and Poland in particular. A provisional Migration Administration was installed but it was given only limited competences. The ILO was then encouraged to focus on technical assistance for migrant workers, a task supported by developing countries, which were increasingly joining the Organisation¹⁴.

The abandonment of regulatory ambitions and the parallel commitment to technical cooperation programs came hand in hand with a partial review of the ILO's standard-setting activities¹⁵. International standards designed to protect migrant workers remained the core of the ILO's normative actions; meanwhile, conventions remained important instruments to establish international norms. At the same time, between the mid-1950s and mid-1960s, the ILO inaugurated a more flexible approach to cope with the growing heterogeneity of its membership: in this context, recommendations were prioritised over conventions since they allowed to create international awareness without establishing a legal obligation to apply their provisions¹⁶.

III. THE NEED FOR A RADICAL REVIEW (1971-1974)

¹³ International Labour Organisation, *Migration for Employment Convention (Revised)*, Geneva, 01/07/1949; International Labour Organisation, *Migration for Employment Recommendation (Revised)*, Geneva, 01/07/1949.

¹⁴ International Labour Office, *Memorandum on the Activities of the International Labour Organisation in the Field of Migration*, Geneva, 15/4/1953.

¹⁵ Michael Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis", *The International Migration Review*, N. 4, 1991, pp. 687-697.

¹⁶ International Labour Organisation, *Recommendation concerning the Protection of Migrant Workers in Underdeveloped Countries and Territories*, Geneva, 22/6/1955; International Labour Organisation, *Plantations Convention*, Geneva, 24/6/1958; International Labour Organisation, *Plantations Recommendation*, Geneva, 24/6/1958; International Labour Organisation, *Convention concerning Basic Aims and Standards of Social Policy*, Geneva, 22/6/1962; International Labour Organisation, *Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security*, Geneva, 28/6/1962; International Labour Organisation, *Convention concerning Employment Policy*, Geneva, 9/7/1964; International Labour Organisation, *Recommendation concerning Employment Policy*, Geneva, 9/7/1964.

Between the late 1960s and early 1970s, international migration patterns radically changed.

Flows into the largest receiving countries, i.e. the United States, Canada and Australia, which previously had been dominated by Europeans were now overwhelmingly originating in the developing countries. This, in turn, was due to a combination of economic growth in European countries and political changes in receiving states: previous preference for white immigrants was then considered as discriminatory and implicitly racist and therefore replaced with policies that allowed and even encouraged immigration from developing countries.

Meanwhile, the rapid increase in foreign workers and the shift from European to non-European migrants contributed to fuel anti-immigration sentiments in all North-Western European countries too. At the same time, the increase in foreign workers, combined with a rise in sensitivity towards the rights of “marginal groups” and concern about their potential impact on security, sparked attention on the need to integrate migrants into host societies. Great Britain, which had never implemented a large-scale recruitment policy, restricted the right to settle in the British islands for Commonwealth citizens originating from outside them.

In the same period, South-Western European countries, especially Italy, Spain and Portugal, saw a decrease in their migration propensity and even started to become magnets for migrants from Southern Mediterranean countries. Meanwhile, they also began to show anxieties about the brain drain phenomenon, becoming more and more reluctant to encourage emigration. Yugoslavia, too, shared this preoccupation. Most developing countries in Africa and Asia were instead much more concerned with decolonisation, opposition to racial discrimination and economic development; they generally continued to consider migration as a self-evident blessing and the only forms of emigration they openly condemned was “white emigration” to South Africa. However, the Third African Regional Conference of the ILO meeting in Accra from 8 to 19 December 1969 showed that an increasing number of African countries was sincerely worried about the negative political, social, and economic implications of massive economic emigration; they also began to be more interested in the rights and conditions of their emigrants, with Algeria at the forefront.

Against this backdrop, a majority of national governments and social partners became aware that there was an urgent need to review the existing international instruments concerning migration and to adopt new instruments to cope with the changing situation. There was once again a widespread conviction that the ILO could be a suitable forum for effectively dealing with this topic. The ILO was an organization with a global membership; its tripartite structure ensured participation and dialogue between representatives of governments, employers’ associations and trade unions. The ILO, too, was the international organisation with more and longer experience in migration policies.

Things came to a head at the International Labour Conference meeting in Geneva from 2 to 23 June 1971, when a group of trade unionists from Belgium, France, Norway, Sweden and West Germany and a workers' representative from Uruguay presented two resolutions on migrant workers. On that basis, an agreement was reached on a Resolution concerning ILO Action for Promoting the Equality of Migrant Workers in All Social and Labour Matters. The document invited the Governing Body of the International Labour Office to request the Director-General: to «give priority to the problem of migration»; to prepare a coordinated programme of activities aimed at promoting and achieving the equal treatment of foreign workers; to undertake studies on the nature and extent of discriminatory practices against migrants and means of solving them; to intensify the activities of the ILO in the field of social protection of migrants so as to achieve coordination and even harmonisation of national laws on equal treatment¹⁷.

Meanwhile, important emigration countries in Southern Europe went even further, by proposing to give the ILO a crucial role in coordinating migration policies. Italy, Spain and Yugoslavia were in the vanguard of this process. The ILO was no longer expected to encourage and regulate migration flows in order to enable the match between international supply and demand for labour: on the contrary, it should now work to limit migration flows by contributing to find alternatives to emigration. A widespread awareness was gaining ground in Southern Europe that workers and sending countries were benefiting much less than expected from migration¹⁸. As emphasised by the vice-president of the Yugoslav Federal Assembly «the time [has] come to seek through inter-state cooperation, and with the assistance of international machinery, forms of economic cooperation that would create new employment opportunities at the very sources of labour, instead of continuing with large migratory movements»¹⁹. According to Italian vice-minister of Labour and Social Welfare the solution should consist of a combination of «stricter measures for the protection of migrant workers and, at the same time, measures likely to direct investment towards [underdeveloped] regions»²⁰; the ILO could effectively contribute through more comprehensive and binding regulations and greater assistance activities.

¹⁷ Under pressure from European immigration countries, quite significantly, mention was also made of the need for the Director-General to study the laying down of the rules governing voluntary repatriation of workers to their country of origin on the expiry of their contracts of employment. International Labour Organisation, *Resolution concerning ILO Action for Promoting the Equality of Migrant Workers in All Social and Labour Matters*, Geneva, 22/06/1971.

¹⁸ Sending countries in Africa and Asia that began to openly bring into question the usefulness of emigration included Morocco, Tunisia, the Republic of Upper Volta, on the one hand, and Philippines, on the other.

¹⁹ International Labour Organisation, *Record of Proceedings of the Fifty-Sixth Session of the International Labour Conference*, Geneva, 1971, p. 165.

²⁰ International Labour Organisation, *Record of Proceedings of the Fifty-Sixth Session of the International Labour Conference*, Geneva, 1971, p. 496.

The monetary crisis due to the US decision to suspend the convertibility of the US dollar into gold, shortly afterwards, worsened the employment and social situation, especially of migrant workers, in many countries. Meanwhile, sensitivity to conditions and rights of migrants was further increasing in both immigration and emigration countries, with trade unions still in the vanguard. It was symptomatic of this trend that a regional meeting of twenty-six national trade union organisations from fifteen European and Mediterranean countries, plus an official representative of the ILO, was held in Belgrade from 24 to 26 April 1972 to discuss migration issues: they put equality of migrant workers in social and working conditions at the centre of their debate and emphasised the leading role that the ILO should assume in promoting it. At the same time, both immigration and emigration countries were becoming more and more skeptical about the benefits of migration, apparently agreeing that a long-term policy of investments in developing countries was a viable and preferable alternative to mass migration.

As requested in the 1971 Resolution, the discussion on migration issues was resumed at the International Labour Conference meeting in Geneva from 7 to 27 June 1972. In this context, a representative of Italian trade unions put forward a document that, starting from the Resolution adopted by the ILC one year earlier, asked the ILO to contribute to eliminate the black market in labour while, simultaneously, cancel discrimination against migrants. After the adoption of minor amendments, that document was turned into the Resolution concerning Conditions and Equality of Treatment of Migrant Workers, which was unanimously approved by the ILC. It helped that, in the same period, a highly publicised accident occurred in which a group of migrants illegally crossing the Italian-French border suffocated in the back of a van when the car was stuck in the Mont Blanc tunnel. In addition to re-emphasising the recommendations put forward one year earlier, the Resolution invited the Governing Body to place the question of migrant workers on an early session of the Conference, preferably that in 1974: the aim was to discuss and create a new instrument aimed at combating unlawful and semi-lawful forms of recruitment and treatment of migrant workers, and eliminating imbalances, inequalities and discriminatory practices against them²¹.

Trade unions were not alone in being concerned with illegal immigration. The fact that spontaneous migratory movements were rapidly replacing organised migration was a becoming a serious matter of concern for immigration countries as well. The most common practice to manage this phenomenon had been that of condoning or tolerating over some periods before “correcting” the migrants’ positions once they had found jobs. As spontaneous migration mounted, however, «public opinion react[ed] unfavourably and compel[led] the public authorities to give up their laissez faire

²¹ International Labour Organisation, *Record of Proceedings of the Fifty-Seventh Session of the International Labour Conference*, Geneva, 1972.

policy and impose effective restrictions»²²: Switzerland and afterwards France were the forerunner of this trend.

Against this backdrop, both emigration and immigration countries turned to the ILO in search for advice and coordination. On the one hand, emigration countries needed and asked for strengthened international protection for their citizens abroad and help in the event of mass return of their emigrants. On the other, immigration countries needed and asked for international support for their nascent fight against spontaneous migration at the time when most of them were starting to adopt a combination of more restrictive measures and more generous integration policies²³.

As requested by the ILC, therefore, in November 1972, the Governing Body of the ILO decided to put the issue of migrant workers on the agenda of the fifty-ninth session of the International Labour Conference due on 5-25 June 1974. The aim was to take a decisive action in this matter, though the Governing Body did not specify neither the number nor the kind of instruments that should be adopted.

At an early stage, the main challenge facing the Governing Body was a general lack of information, except for Western Europe. To this end, the Governing Body charged Jean Lasserre-Bigorry to conduct a series of fact-finding missions in Libya and Algeria; Ali Taqi in Senegal, Ivory Coast and Ghana; Claude Dumont in Colombia, Argentina and Venezuela²⁴. These missions were accomplished between mid-January and mid-February 1973; their outcomes, together with already available information, formed the basis for a first report, which was released on 12 March 1973. Following a short statement on migration under abusive conditions and equality of opportunity and treatment for migrants, the report discussed possible future international action and included a questionnaire to which governments were asked to reply; in accordance with the tripartite nature of the organisation, all governments were strongly recommended to consult the most representative associations of employers and workers before finalising replies to the ILO questionnaire²⁵.

²² Historical Archives of the International Labour Organisation (HAILO), Governing Body (GB), 188-100-5, Governing Body, *Fifth Item on the Agenda. Future ILO Action on Migrant Workers*, Geneva, 14-17/11/1972. The same ILO study argued that such a reaction in public opinion was not only inspired by pure xenophobia appearing once the “threshold of tolerance” had been passed. According to the study, the reaction was also due to the sight of foreign workers living in conditions which public opinion considered morally and socially unacceptable.

²³ When the government in Bonn promoted an important exchange of views on integration of migrant workers, which took place in Freiburg im Breisgau on 23-27 October 1972, it was natural to invite a representative of the ILO; it was the only member of a world-wide organisation participating in it. HAILO, Migration (MIG), 1-156-102, Permanent Mission of the Federal Republic of Germany to the international organizations at Geneva: Otto Baron von Stempel, *Letter to the Director General of the International Labour Office: Wilfred Jenks*, Geneva, 6/6/1972.

²⁴ HAILO, International Labour Conference (ILC), 59-417, E. Kane, *Ordre du jour de la 59^e Session de la Conférence internationale du Travail (1974): Les Travailleurs migrants*, Genève, 24/11/1972.

²⁵ HAILO, Conditions of Work and Life Department: René Livchen, *Letter to the Director General of the International Labour Office: Wilfred Jenks*, Geneva, 3/7/1973.

On the basis of the responses to the questionnaire sent by 14 November 1973, the Governing Body drew up a second report for submission to the next Conference.

In the meantime, a combination of political and economic factors led to a new, important change of the context.

While Southern European countries had already begun to openly bring into question the previous reliance on migration, in 1973 important countries in Asia and especially in Africa started to follow suit in a more direct manner. The fifty-eighth session of the International Labour Conference, which took place in Geneva from 6 to 27 June 1973, provided evidence of this shift²⁶. It is true that Spanish and especially Yugoslav representatives were once again the most vociferous in their request to give the ILO a role in the international efforts to «channel capital and technology in the direction of the available manpower resources with a view to eliminating the reasons for the extensive migration which causes so many problems in both the countries of emigration and those of immigration»²⁷. At the same time, however, representatives from Asian and African countries came to similar views. As highlighted by the Minister of Labour and Social Affairs of Iraq, Abdul Qadir, «the increased movement of investment capital from advanced countries to developing countries is a better alternative than the migration of labour as it avoids the human and social problems that accompany migration»²⁸. Similarly, the Senegalese Minister of the Civil Service, Labour and Employment Senegal stated that «we shall have no success unless the transfer of industry to our country takes the place of the emigration of our workers»²⁹. This were attitudes that were openly supported, too, by Director-General of the ILO Clarence Wilfried Jenks.

Algeria, one of the leading members of the Non-Aligned Movement (NAM), was the first to take concrete action. Taking as a pretext a series of ethnic riots started in Marseille on 25 August 1973, Algeria decided to cut its institutionalised migration links with its former metropolitan power: France. This was due to both the willingness to confirm and strengthen its independence from Paris

²⁶ The fifty-eighth session of the International Labour Conference, in fact, was only marginally concerned with migration issues since an agreement was made to discuss the topic in the next session in 1974. The most active actors, as usual, were representatives of trade unions, in both emigration and immigration countries, in both the West and the East: their common concern was to provide migrants with the highest possible level of social protection. International Labour Organisation, *Record of Proceedings of the Fifty-Eighth Session of the International Labour Conference*, Geneva, 1973.

²⁷ International Labour Organisation, *Record of Proceedings of the Fifty-Eighth Session of the International Labour Conference*, Geneva, 1973, p. 104.

²⁸ International Labour Organisation, *Record of Proceedings of the Fifty-Eighth Session of the International Labour Conference*, Geneva, 1973, p. 199.

²⁹ International Labour Organisation, *Record of Proceedings of the Fifty-Eighth Session of the International Labour Conference*, Geneva, 1973, p. 225. In this context, there were also more “moderate” positions. Although he agreed that emigration could not represent a long-term solution to unemployment and underdevelopment, the Minister of Labour, Social Security and Co-operatives of Trinidad and Tobago was convinced that until developing countries were not able to reach acceptable level of socioeconomic progress, it was in their interest to encourage planned temporary emigration; against this backdrop, the ILO was expected to explore and initiate international emigration schemes. International Labour Organisation, *Record of Proceedings of the Fifty-Eighth Session of the International Labour Conference*, Geneva, 1973, p. 524.

and to sustain domestic economic growth in the wake of the nationalisation of oil companies. The decision paved the way to a more general reconsideration of the migration processes, which was conducted within the NAM as a whole. The fundamental idea behind this rethink, which was directly influenced by studies conducted by or within the framework of the ILO³⁰, was that the main economic benefits of emigration, i.e. relief of unemployment, productive use of remittances and utilisations of skills upon return, were far less certain than had been assumed; the demand-determined pattern, in addition, had contributed to widen rather than to alleviate the gap between poor and rich countries.

The Members of the NAM did not put migration at the centre of their claims but for the first time they made a significant, critical mention of that issue at the fourth summit conference of their heads of state or government which took place in Algiers from 5 to 9 September 1973: according to them, in particular, «urgent measures should be taken at both national and international levels to stop the brain-drain from developing to developed countries»³¹. This request was in line with a more general struggle conducted within the context of the United Nations to establish a New International Economic Order aimed at radically changing trade, financial and monetary rules and mechanisms to stop lingering economic inequalities and imbalances. Within this framework, migration was seen as an obnoxious proof of developing countries' subordination to developed countries and a very obstacle to the plans of economic development³².

The same concept and request, significantly, were later inserted into the Resolution concerning Development and International Economic Cooperation: explicitly inspired by the Declaration and Programme of Action on the Establishment of a New International Economic Order adopted by the UN on 1 May 1974³³, the Resolution was unanimously adopted by the General Assembly of the United Nations on 16 September 1975. Under pressure from delegates of Third World countries, representatives from UN member states stated that «since the outflow of qualified personnel from developing to developed countries seriously hampers the development of the former, there is an urgent need to formulate national and international policies to avoid the "brain drain" and to obviate its adverse effects»; reference was also made to the need to make full use of «know-how,

³⁰ International Labour Organisation, *Some Growing Employment Problems in Europe*, Geneva, International Labour Organisation, 1973, pp. 81-110.

³¹ Non-Aligned Movement, *4th Summit Conference of Heads of State or Government*, Algiers, 5-9/9/1973. The issue of migration figured prominently also at the Fourth African Regional Conference of the ILO held at Nairobi between 26 November and 6 December 1973.

³² Christopher R.W. Dietrich, *Oil revolution: sovereign rights and the economic culture of decolonization*, Cambridge, Cambridge University Press, 2017.

³³ General Assembly of the United Nations, *Declaration on the Establishment of a New International Economic Order*, 3201 (S-VI), 1/5/1974; General Assembly of the United Nations, *Programme of Action on the Establishment of a New International Economic Order*, 3202 (S-VI), 1/5/1974.

skills, [...] available within developing countries for promotion of investments in industry, agriculture, transport and communications»³⁴.

Meanwhile, the hike in energy prices due to the 1973 oil shock led to a socioeconomic crisis in all the main Western countries, which, in turn, strengthened resistance towards immigration of foreign workers; this came at a time when most developing countries were hit even harder. Simultaneously, the energy crisis opened fresh opportunities in oil exporting countries in Northern Africa and to a greater extent in the Persian Gulf, Saudi Arabia in particular. While there had always been traditional migratory movements between Arab states, the oil price rises triggered an explosion in the demand for labour, particularly for construction. The region's states met this demand by drawing in more workers from neighbouring countries and, shortly afterwards, from Maghreb countries, Turkey and South-Eastern Asian states.

Against this backdrop, a first discussion on new instruments to supplement the existing international standards followed from 5 to 25 June 1974, when the ILC, at its fifty-ninth session, debated international trafficking in labor and ways of suppressing irregular migration, as well as means of further promoting equality of opportunity and treatment in law and practice.

IV. THE ADOPTION OF AN AMBITIOUS INSTRUMENT (1974-1975)

The debate within the ILC and the Committee on Migrant Workers set up by the Conference showed that there was a general awareness of the need to adopt new rules; a generalised pessimism about the implications of mass migration for both sending and receiving countries; and a common recognition that migration for employment arose mainly from the unequal development of countries and a solution could only come from international action on the root factors causing it.

A fundamental divide, however, emerged between emigration and immigration countries over the nature, number and purposes of the instruments to be adopted.

The major immigration countries were particularly concerned with the fight against illegal immigration and, unsurprisingly, more reluctant to accept specific obligations as to conditions and treatment of migrant workers. Western European countries were in the vanguard, but not alone: New Zealand was equally preoccupied with containing immigration. In accordance with this approach, most immigration countries believed that it would have been preferable to have two separate Conventions, on migrations in abusive conditions and on equality of opportunity and treatment respectively. The arguments were that there were two completely different subjects and that the first document would be more easily ratified than the second: their merger would have discouraged

³⁴ General Assembly of the United Nations, *Development and International Economic Cooperation*, 3362 (S-VII), 16/9/1975.

ratifications, especially in receiving countries. Great Britain was particularly adamant on this point. While it was convinced that the fight against clandestine movements was an appropriate subject for a Convention, London believed that equality of opportunity and treatment was to be dealt in a separate instrument, preferably a Recommendation: due to differences in national systems, in its view, social security matters were best dealt with by bilateral or sometimes by regional agreements.

On the other hand, emigration countries stood in favour of far-reaching measures promoting equality of opportunity and treatment of migrant workers. A group of them, in addition, was opposed to a radical suppression of illegal migration as it provided much needed relief: though it was concerned with the brain drain of skilled workers, Maghreb countries and Turkey continued to be heavily reliant on emigration and particularly convinced that the outflow of its surplus manpower should go on. Trade unions, too, prioritised the demand that migrant workers should enjoy the same treatment and the same rights as nationals of the country of employment and that all forms of discrimination to the detriment of migrant workers should be abolished. These countries and workers' organisations expressed a preference that the proposed instruments should take the form of one single Convention concerning both migrations in abusive conditions and equality of opportunity and treatment. According to them, the proposed Convention constituted a whole whose two elements were interdependent and complementary; as emphasised by a representative of the Italian government, «to ratify a Convention which is purely repressive against abusive migration [...] has no meaning if it does not contain the positive part concerning equality of treatment»³⁵.

The fight against illegal immigration, too, was conceived in different ways and for distinct reasons. The major immigration countries wanted to suppress clandestine movements of migrants in order to make effective their newly-adopted restrictive migration policies, regain control over migration flows, safeguard social stability and reassure the public opinion; the favourite means to pursue this aim was to effectively combat and sanction the authors of manpower trafficking. On the other hand, emigration countries were more willing to prevent and eliminate abuses resulting from uncontrolled migratory movements, especially in terms of exploitation of illegal employment, than to prevent and repress them; in this sense, the fight against illegal immigration was more meant as part of the strategy for guaranteeing equality of opportunity and treatment for migrant workers and their families than as part of the strategy for improving migration control. As a consequence, the focus was on those who exploited illegal employment, not on those who organised illegal trafficking.

More generally, migration was increasingly becoming a bone of ideological contention, with Southern and Eastern members using it as a club against Western countries. While the Algerian

³⁵ International Labour Organisation, *Record of Proceedings of the Fifty-Nineteenth Session of the International Labour Conference*, Geneva, 1974, p. 726.

Minister of Labour and Social Affairs defined international migration as a fundamental aspect of Western imperialism, trade unions' representatives from Czechoslovakia put it at the centre of their criticism of Western multinationals: «they make use of the cheap manpower of the less-developed countries, employing immigrant workers, while at the same time they strive to set workers of various nationalities against one another with a view to weakening the trade union movement in this way»³⁶. The Egyptian Minister of Manpower, in addition, put emphasis on the so-called «expansionist forms» of migration, described as gradual occupation with a view to the domination of the country of reception and the transformation of its population into a subject majority and then a minority; the clear intent was to use migration to denounce Israel, Rhodesia and South Africa³⁷. Meanwhile, the United States put emphasis on the right to migrate in order to embarrass the Soviet Union and expose its contradictions. US representatives, in particular, denounced that while Moscow had ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which included the right to migrate, it was nonetheless forcibly prohibiting Soviet Jews from migrating to Israel.

After having verified that the conditions for an agreement were lacking, it was decided to put the question of migrant workers on the agenda of the next session of the Conference³⁸.

The situation was rapidly evolving. The socio-economic crisis in oil importing countries was worsening. This, in turn, made a particularly negative impact on conditions and employment opportunities of migrants and further reduced consensus on foreign labour recruitment policies in immigration countries, especially in Western Europe. At the same time, facing the crisis, many emigration countries in Northern Africa and the Middle East were still interested in exporting surplus manpower in order to alleviate social tensions and contribute to redress their balance of payments. Between mid-1974 and mid-1975, all the main immigration countries in Western Europe decided to unilaterally ban the recruitment of foreign workers. Meanwhile emigration countries in Northern Africa and the Middle East searched for alternative outlets in the Persian Gulf region and to a lesser extent in Libya while turning a blind eye on increasing irregular movements of migrants towards Northern and even Southern European countries. This situation created a combination of new sources of tension and incentive for cooperation between emigration and immigration countries. Convinced that immigration countries were trying to shift the burden of the crisis onto the shoulders of sending countries and migrant workers, most emigration countries were nonetheless aware that collaboration with receiving countries was needed to protect migrants, find alternatives to migration and manage

³⁶ International Labour Organisation, *Record of Proceedings of the Fifty-Ninth Session of the International Labour Conference*, Geneva, 1974, p. 105.

³⁷ International Labour Organisation, *Record of Proceedings of the Fifty-Ninth Session of the International Labour Conference*, Geneva, 1974, p. 202.

³⁸ International Labour Conference, *Resolution to Place on the Agenda of the Next Ordinary Session of the Conference an item Entitled "Migrant Workers"*, Geneva, 24/6/1974.

return. Immigration countries, too, began to realise that cooperation with sending and transit countries was crucial to effectively combat illicit trafficking of migrants.

Against this backdrop, the ILC meeting in Geneva from 4 to 25 June 1975 addressed and settled all pending issues³⁹.

In the end a decision was made to adopt a single Convention composed of two parts, one devoted to migrations in abusive conditions and one devoted to equality of opportunity and treatment; an amendment aimed at dividing the Convention into a Convention on migrations in abusive conditions and a Recommendation on equality of opportunity and treatment, submitted by employers and strongly opposed by workers' representatives, was narrowly rejected. However, any member state which ratified the Convention might, by a declaration appended to its ratification, exclude either the first or the second part from its acceptance of the Convention.

The Convention clearly showed that optimism about migration, which had characterised the period between the mid-1940s and late 1960s, had vanished in the great majority of both emigration and immigration countries. In the preamble, the document emphasised the need to avoid the excessive and uncontrolled increase of migratory movements «because of their negative social and human consequences»⁴⁰. Against the wishes of important developing countries ranging from Mali to Mexico, no explicit mention was made of the New International Economic Order as a solution to the problem. The Convention, however, recognised that in order to overcome underdevelopment and structural and chronic unemployment, the transfer of capital and technology was preferable to the transfer of workers for both receiving and sending countries: a switch-over was to be made towards a reduction of differences in the level of socioeconomic development by bringing work to workers instead of workers to work.

In this context, the Convention pursued two distinct aims.

On the one hand, it aimed at regulating migration flows, particularly by combating irregular migration.

After having solemnly stated that the basic human rights of all migrant workers must be respected, the Convention placed a duty upon states to determine whether there were illegally employed migrant workers in their territories and to take all necessary and appropriate measures to suppress clandestine movements of migrants. Measures were to be taken, both within national jurisdiction and through international collaboration, against the organizers of these movements and against those who employed workers who had immigrated in illegal conditions, in order to prevent

³⁹ International Labour Organisation, *Record of Proceedings of the Sixtieth Session of the International Labour Conference*, Geneva, 1975.

⁴⁰ International Labour Organisation, *Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers*, Geneva, 24/6/1975.

abuses; representative organisations of employers and workers were to be systematically consulted. The Convention, of course, did not provide for sanctions against the workers themselves consequent on their irregular status and, under pressure from employers' organisations, gave employers using irregular migrants the right to furnish proof of their good faith.

On the other hand, the Convention aimed at facilitating the integration of migrants into host societies. The document went beyond mere elimination of discriminatory measures and required states, in close cooperation with employers' and workers' organisations, to take positive action to promote and guarantee equality of opportunity and treatment in employment and occupation of migrant workers and members of their families who were legally present in the territory of the host state. The Convention covered migrant workers in both regular and irregular status, with some provisions covering all migrant workers and other provisions granting additional rights to those in regular status. Regular migrant workers were provided with equality of treatment and equality of opportunity in respect of employment and occupation, social security, trade union rights, cultural rights, and individual and collective freedoms. In addition, receiving countries should address the special needs of migrant workers and their families, at least until they were integrated into the society of the country of employment, and facilitate the reunification of the families of all migrant workers legally residing in their territories; all necessary steps, too, were to be taken to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin.

The Recommendation supplemented the Convention with more detail on equality of treatment and opportunity for those migrant workers in regular status and on equality of treatment for those in irregular status. It additionally included provisions on social policy, family reunification, health protection, social services, employment and residence.

Interestingly enough, workers' representatives of Egypt proposed to insert a third part, with the title "Measures Designed to Discourage Migratory Movements when Considered Undesirable in the Interests of the Migrant Workers and of the Communities of Countries of Their Origin or the Countries of Destination". Strongly supported by the representative of the Algerian government, this part was intended to give the governments of the countries of origin and destination the right to discourage migration movements when these went against the socioeconomic and especially the political interests of migrant workers and countries involved. The United States opposed the amendment, since it interpreted it as an implicit criticism of Israel and South Africa. At the end, a decision was made to submit a draft resolution on this point and to postpone its discussion to a later meeting.

CONCLUSIONS

Due to its powers, competence, experience and nature, the International Labour Organisation was the most legitimate candidate for setting common standards and promoting cooperation in the context of the global migration turn emerging between the late 1960s and mid-1970s.

The conditions for finding a good compromise solution within the ILO then seemed favourable. The Great Detente was relaxing tensions between the two blocs. Moreover, the increasing disillusionment with emigration in developing countries matched the increasing resistance to immigration that, for distinct motives, was spreading in most industrialised countries; the establishment of a New International Economic Order appeared as an effective response to mitigate both pull and push factors. The renewed emigration countries' will to protect their citizens abroad, finally, combined with the urgent need for immigration countries to integrate migrants, the aims being to respond to enhanced social sensitivity and security concerns of local populations; trade unions, too, were particularly interested in ensuring equality of conditions and treatment in order to promote the rights of migrant workers while avoiding harmful dumping effects in a period of socioeconomic crisis.

However, the radicalisation of the dispute between the Global South and North and the economic-political dynamics triggered by the first oil shock, made a compromise solution more difficult to be reached.

The 1975 Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers represented the outcome of a difficult negotiation process. For the ILO it marked the last, ambitious attempt to carve an important role for itself in the international migration governance. For the international migration law it constituted an original contribution, especially when compared with the 1949 Migration for Employment Convention, the previous most important ILO instrument dealing with migration.

Both these instruments were drafted with state-controlled and state-organized migration in mind, rather than spontaneous migration or market-driven migration; the countries of origin and employment agreed that the state had the right and the duty to control and organise the flows of migrant workers in the interest of the countries involved and the migrant workers themselves. Both of them, too, were originally conceived with a view to covering migration for either immediate or gradual settlement. Both of them, finally, were developed when women migrants were mostly found in the context of family reunification rather than in labour migration; as denounced by the observer of the International Council of Social Democratic Women, in particular, the 1975 Convention had not taken into sufficient account the specific problems of the woman migrant worker, either as a woman worker or as a member of a family.

However, there were also important differences between the two. The 1949 Convention was developed in a context when there was a need for large-scale transfers of labour and was motivated by a concern to facilitate the movement of surplus labor from Europe to other parts of the world; in addition, it only applied to migrant workers who were legally residing and working in the host country. The 1975 Convention was adopted in a context of restrictions on importation of foreign manpower and rising irregular migration and employment. The focus then shifted from facilitating the migration of surplus labour to bringing migration flows under control. Meanwhile, it was the first international instrument to deal with the issue of migration in abusive conditions: the approach was to provide them with rights while calling for sanctions against traffickers and exploiters⁴¹.

The impact of the Convention was well below the expectations. The International Labour Organisation as a whole experienced a period of political turbulence culminating with the withdrawal of the United States in 1977. Two years later, in 1979, the Soviet invasion of Afghanistan led to the end of the Great Detente and the beginning of a short but very tense Second Cold War that inevitably reverberated on the delicate balance within the Organisation. Also, most member states, especially the immigration ones, remained reluctant to assume international obligations and assign a coordination role to international organisations. One fourth of countries abstained and only one sixth of the ILO's member states have hitherto ratified the document; with very few exceptions, all the main immigration countries in the world have not made it yet.

The application of its provisions, too, was unequal and incomplete. The UN proposal to establish a New International Economic Order came to nothing. On the contrary, apart from some regions, socioeconomic imbalances and, consequently, migration flows dramatically increased, with irregular movements having the lion's share. Meanwhile, rights, conditions and treatment of migrant workers improved in many areas, including in Western Europe. That said, they lagged behind and even deteriorated in many other areas and, more generally, irregular migrants continue to suffer severe social and economic disadvantage and discrimination in all receiving countries.

However, the innovations brought about by the 1975 Convention should not be underestimated. Apart from the important, direct impact it made in the evolution of the migration policies and laws in some countries, it had the historical merit to highlight, for the first time at international level: the nexus between integration of migrants and fight against illegal immigration; the close relationship between underdevelopment and migration flows; the need for a new pattern of cooperation between sending and receiving countries at the end of the Golden Age.

⁴¹ The Convention used the terms "clandestine" to refer to irregular migratory movements and "illegal" to refer to undocumented employment. Significantly, it did not use the term "illegal" to refer to migrant workers themselves. Martin Ruhs, *The Price of Rights. Regulating International Labor Migration*, Princeton, Princeton University Press, 2013, pp. 14-15.