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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL
MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by Italy

Introduction

1. The Working Group is charged with the preparation of an international Convention on all migrant workers and their families which should cover the generality of rights of migrant workers, political, civil, cultural, economic and social, within the context of fundamental rights and freedoms as expressed in the relevant United Nations Declaration and Covenants.
2. It has to be taken into account that ILO conventions and recommendations and other international instruments already deal with specific problems concerning the status of migrant workers, and that some specialized agencies, such as ILO, have a specific competence in this field. Therefore the proposed convention should have a wide scope, in order to cover the generality of persons staying in another country for reasons of work, and in order to cope with the whole range of problems with which these workers are confronted; on the other hand the proposed convention should essentially contain rules of general application within the context of human rights; moreover it should cover other aspects which are not sufficiently considered by existing international instruments.

In this regard, it must be added that many situations concerning migrant workers show regional peculiarities and could be best dealt with at a regional level.

Therefore the proposed convention should be intended to complete the United Nations Covenants on human rights in connexion with the specific problems concerning migrant workers and have the same character as the Covenants.

3. As far as rules of general application are concerned, it seems that fundamental guarantees should be recognized in relation to the specific situation of migrant workers: the proposed Convention should therefore provide appropriate legal protection in order to ensure non-discrimination, de facto or in law, in the enjoyment of basic freedoms and human rights for all migrant workers.

4. Special consideration should be given to situations not covered until now by existing international instruments.

In this connexion, particular attention should be given to a new kind of "migration", which is taking up a growing importance in today's world-wide economic relations and which plays a considerable role in co-operation for development: that is groups of workers, employees and technicians, nationals of one State, which move for given periods to other States in order to execute works contracted by foreign public or private companies.

Special rules should also be provided for independent workers or professionals established in other States.

Section I - Provisions of general application

5. Basic rights should be recognized with respect to all persons and their families who have entered the territory of another State, whatever the legal basis of such entrance, in order to take up in that State paid employment or to exercise independent activities or being employed by foreign contractors operating in that country, or visiting the other country for reasons of work whatever the duration of their stay.

They should be able to benefit of the protection of consular or diplomatic authorities of the State of which they are nationals and communicate with these authorities. Guarantees should be provided for in cases of arrest or detention in the course of administrative, civil and criminal proceedings, and in relation to measures of expulsion or deportation. Their access to tribunals should not be discriminated. The fundamental freedoms of thought, opinion, expression and religion, the protection of their rights to property, the safeguard against unhuman treatment and the security of their persons should also be recognized. Finally, their right to leave the country they have entered should not be subject to limitations not connected with fundamental reasons of national security, and the rights they have acquired in that country in relation to their work or employment should be protected.

Section II - Provisions concerning persons authorized to take up paid employment or to exercise independent activities in the territory of another State

6. These migrant workers and members of their families should be granted, in the receiving State, on equal terms as nationals, the benefits of those fundamental rights, as expressed in the United Nations Covenants on political and civil rights and on economic, social and cultural rights; taking into account their status of foreigners, restrictions might be therefore admissible, only in the field of political rights. However adequate measures should be taken in order to make possible their participation in decisions concerning local community life, including information, consultation and other forms of active participation to local administration, taking into account their degree of integration in the local community.

7. For salaried workers the following principles should also be emphasized:

Admission and residence in the receiving country should not be subject to such conditions which might prevent promotion of equality of treatment and opportunities of migrant workers in relation to nationals as far as conditions of work, unemployment, re-employment are concerned.

Equality of treatment should be realized in connexion with social benefits (housing, education, old age, social security, health insurance schemes), subject, wherever necessary (in particular for the reciprocal recognition of these benefits in the relevant State) to specific bilateral or multilateral agreements in these matters. The principle of equality of treatment should govern also the application of taxation laws.

Special care should be accorded to the protection of families of migrant workers, taking into account the specific problems of women and children which entails, if the family remains in the country of origin, the possibility of transferring the earnings and savings of migrant workers to this country and, if the family has been reunited in the receiving country, the adoption of specific measures in order to favour the integration of its members, in the new social environment (problems of housing, schooling, etc.).

Concerned States should also agree on measures to facilitate family reunion and in this connexion should give special attention to the problems of migrant women in order to avoid any discrimination between men and women in the access to work.

8. In relation to self-employed workers, conditions for engaging in a gainful occupation in the territory of the receiving State should be clearly defined and should lead to equality of treatment with nationals of this State, including membership in bodies of an economic or professional nature, whenever such conditions are fulfilled. Restrictions should be eliminated after given periods of residence in the receiving State, if other necessary qualifications (professional or technical) are present, it being understood that certain listed occupations may be exclusively reserved to nationals, or their exercise by aliens be subject to reciprocity or to the existence of specific agreements. The list of such occupations should be limited and subject to reductions. No charges, taxes or other duties should be imposed on foreign workers which are not required from nationals. The family of these workers should also receive adequate protection.

9. Workers who have entered illegally the territory of the receiving country and are illegally employed must be granted the fundamental rights defined in section I of this working paper, and their situation should not deprive them of the guarantees envisaged in part I of ILO Convention 143.

Section III - Provisions concerning alien workers employed by foreign companies or enterprises for specified periods in a third State

10. Besides the general guarantees envisaged in section I, the particular situation of these workers commands specific engagement on the part of the receiving State.

Their recruitment is necessarily subject to laws and regulations of the State where it is made and their work contract should be regulated, except as otherwise provided by the parties within the limits of imperative provisions of applicable law, by the law of the State where the seat of the enterprise is located.

Their stay and their professional activity in the receiving country should be guaranteed by the required authorizations for all the duration necessary for the execution of the works for which they are transferred to that country.

They should enjoy equality of rights with nationals in matters of taxation, housing, social security, protection of families, schools for children.

11. Moreover, further specific rules should apply concerning their living conditions. In fact, often the enterprise for which they work will be ready to provide houses, schools, hospitals: the receiving State should favour the installation of such facilities. Their salary might be paid in the country of origin, and social security schemes of this country might be applicable, in which cases double taxation of salary and double submission to the social security system should be avoided.

Members of the family should always be allowed to join the workers in the receiving country, during the period of his stay, for short duration visits or to live with him, if they so wish.

12. Furthermore, the protection of the person of the workers concerned would imply the acceptance of certain standards, especially in order to avoid that in civil, administrative, criminal and taxation matters, liability arising out of obligations incurred by the enterprise as such might determine any direct or indirect responsibility of its salaried personnel - as opposed to members of its governing bodies or its legal representatives. In particular, no measures entailing a deprivation of liberty or limiting the freedom to leave the host country should be admitted in these cases.

13. States should also, for the purpose of giving effect to a fuller protection of these workers, grant foreign contractors all rights and facilities provided for in their respective contract for the execution of their obligations and should avoid all measures designed to bring a prejudice to the regular development of their activities and causing damages to persons employed by such enterprises.

Final considerations

14. Principles indicated above should be considered as the appropriate basis for the elaboration of the proposed Convention on the protection of rights of all migrant workers and their families. This Convention must not prejudice the application of other relevant conventions and instruments. Its main object should be to provide the framework for more detailed international rules, to be adopted by the United Nations specialized agencies as well as by the concerned organizations and countries on a regional or bilateral basis.