



INTERNATIONAL LABOUR CONFERENCE

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Ninety-second Session, Geneva, 2004

Resolution concerning a fair deal for migrant workers in a global economy¹

The General Conference of the International Labour Organization, meeting in its 92nd Session, 2004,

Having undertaken a general discussion based on an integrated approach on the basis of Report VI, *Towards a fair deal for migrant workers in the global economy*,

1. Adopts the following conclusions;
2. Invites the Governing Body to give due consideration to them in planning future action on migrant workers and to request the Director-General to take them into account both when preparing the Programme and Budget for the 2006-07 biennium and allocating such other resources as may be available during the 2004-05 biennium.

Conclusions on a fair deal for migrant workers in a global economy

Issues and challenges

1. The preparatory report for the present general discussion *Towards a fair deal for migrant workers in the global economy*, the rich and multifaceted discussion held in the Conference Committee as well as the report of the World Commission on the Social Dimension of Globalization reflect a clear consensus on the fact that international migration is increasingly important in the global economy of today. Nearly all countries today are affected by international migration, either as origin, transit or destination countries – and in many cases all these capacities. The rising mobility of people in search of opportunities and decent work and human security has been commanding the attention of policy-makers and prompting dialogue for multilateral cooperation in practically every region of the world. The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration and can work towards eliminating identifiable detriments of labour migration in collaboration with other international organizations.
2. Although migration has been a permanent phenomenon throughout history, international migration in the globalized economy is a growing and increasingly complex phenomenon. A very large part of contemporary migration is directly or indirectly related to the world of work. Of the 175 million people thought to be residing outside their countries of birth or

¹ Extracted from the Report of the Committee on Migrant Workers,
<http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-22.pdf>

citizenship, some 86 million are estimated to be economically active. Of these, 34 million are thought to be in developing regions. Women continue to constitute about half of all migrants, but most are now migrating on their own as primary income earners. Many people choose to migrate to improve their living standards and may migrate due to a lack of decent work opportunities at home; however, other factors contributing to migration include poverty, wars, famine and repression as well as population pressures and income inequalities. There are also instances of forced migration for work that should be eliminated.

3. Regional economic integration processes today provide opportunities for facilitating more productive use of labour within larger market spaces. Economic effects of migration for employment are mainly beneficial, allowing for non-inflationary economic expansion, job creation and rejuvenation of populations. Perceptions of adverse immigration impacts are often unfounded or exaggerated, although particular sectors have experienced declines in wages and conditions. Effects of labour migration on countries of origin, particularly less developed countries, are more complex.
4. It is recognized that among many of the beneficial elements of labour migration are non-inflationary economic expansion, job creation, growth and cross-fertilization of skills, technology exchange, rejuvenation of populations and stimulation of development through remittance flows. The ambition and the drive that motivate people to migrate generally help them to find jobs in many countries, work hard, and benefit both themselves and host country nationals. Demographic trends in some regions suggest that immigration will in some instances be an important component of a long-term solution to the anticipated problems raised by ageing. The ILO's Global Employment Agenda supports policies for economic growth and employment.
5. Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion. Gaps in working conditions, wages and treatment exist among migrant workers and between migrant and national workers. In a significant number of cases unemployment rates, job security and wages differ between regular migrant workers and national workers.
6. The number of migrants in an irregular situation is rising, fuelled by the growth of informal forms of employment, shortages of workers for dirty, demeaning and dangerous jobs ("3D-jobs") and lack of opportunities for regular labour migration. The absence of formal management for migration and national policies in some countries contributes to the increasing number of irregular migrants. The increase in trafficking, especially of women and children, poses a particular threat to human rights protections and creates new challenges for governments and the international community. Victims of trafficking face abusive and exploitative situations, often without effective access to legal protection. In some countries, some irregular migrant workers face similar situations, including sexual and physical harassment, debt bondage, retention of identity documents and threats of denunciation to the authorities, without effective access to legal protection. Private fee-charging recruitment agencies are increasingly involved in international migration and despite efforts both at the national and international levels to regulate this market, some engage in unethical practices which may contribute to irregular migration, causing hardship to migrant workers.
7. Temporary workers and migrant domestic workers often have limited legal rights, may be excluded from social security benefits and may face multiple disadvantages.
8. The complex relationship between migration and development is another issue that is attracting increasing attention. While the potential long-term benefits of circular migration, cross-fertilization of skills and technology exchange have been recognized, the permanent

loss of critically skilled workers in many developing countries is nonetheless an increasing issue of concern. This involves the loss of scarce national economic resources that have been invested in education and training. There is a need for further studies and analyses of the effects of the movements of highly skilled migrant workers and those with advanced education on economic and social development in developing countries. Health-care capacity of a number of countries has been particularly affected by the departure of trained doctors and nurses. In addition to the economic costs, there are often social costs to the families of migrant workers, including family dislocation, children growing up without parents, disrupted schooling, and the spread of HIV/AIDS.

9. While returning migrant workers bring back skills, capital, experience and knowledge, these benefits from labour migration can be enhanced by appropriate and equitable conditions to support the return of migrants. Remittance flows represent the second largest source of external funding for developing countries after foreign direct investment; they are transfers of private individual earnings, and usually go towards improved housing, nutrition, schooling and health care. Many of these activities have a significant multiplier effect, with the potential to reduce poverty and expand decent work. Increased remittance flows should not substitute for sound macroeconomic policy, investment in public services and official development assistance (ODA). Improved policies and effective and targeted ODA are also required to reduce poverty in developing countries and to promote decent work as a central objective of national and international economic policies.

Policy approaches

10. Acknowledging the sovereign right of all States to develop their own migration and labour policies, it is accepted that multilateral rules, standards or, as appropriate, guidelines, play an important role to make policies coherent, effective and fair. In that context, coherent, comprehensive, consistent and transparent policies are required to effectively manage migration. National policies and their administration must also be viable, adaptable, dynamic and flexible. All relevant ministries, and in particular labour ministries, merit a key role in policy formulation, elaboration, management and administration of labour migration to ensure that labour and employment policy considerations are taken into account. Effective administration of labour migration requires structures and mechanisms with necessary competencies and capacities within these ministries. Structures and regular mechanisms for social dialogue on migration policy are necessary for meaningful involvement of representative employers' and workers' organizations. Mechanisms for consultation with civil society and migrant groups are also needed.
11. To be effective, credible and enforceable, national policy and practice regarding labour migration and the protection of migrant workers require a sound legal foundation based on the rule of national and international law. A broad array of international labour standards contain principles and rights to guide national law and policy on managing labour migration and the protection of migrant workers. The Migration for Employment Convention, 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151, in particular, call for cooperation among States, and measures to facilitate and control migration movements. They contain the underlying principle of equality of treatment between nationals and regular migrant workers, minimum standards of protection for all migrant workers, and provisions for participation of social partners in national policy formulation.
12. All migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the

elimination of child labour, cover all migrant workers, regardless of status. The ILO Declaration makes specific reference to groups with special needs, specifically including migrant workers. Other ILO standards in areas such as employment, labour inspection, social security, maternity protection, wages, occupational safety and health, and private recruitment agencies as well as in such sectors as agriculture, construction and hotels and restaurants which traditionally employ a large number of migrant workers, also provide necessary guidance for national law and policy to ensure protection of migrant workers.

- 13.** Comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour migration are necessary and should be promoted. Important measures may include: entering into bilateral or multilateral agreements to provide social security coverage and benefits to regular migrant workers and, as appropriate, to migrant workers in irregular situations, in conformity with relevant international standards and practices; reflecting the differences in conditions facing men and women migrants through measures to improve conditions and reduce specific vulnerabilities faced by female migrants; promoting access to health care for migrant workers and their families, including promoting HIV/AIDS prevention; explicitly addressing discrimination and xenophobia against migrant workers, taking into account relevant recommendations in the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001); and facilitating economic, social and cultural integration of regular migrant workers and family members into host societies.
- 14.** Employers confront numerous policy and practical challenges in employment of foreign workers, including: identifying, recruiting and ensuring entry of foreign workers through regular channels; complying with complex and lengthy administrative procedures; addressing document control; facing risks of sanctions for employing migrant workers without authorization; managing relations in multi-ethnic workplaces; and assuring proper training and workplace protection in multilingual contexts.
- 15.** For workers' organizations, labour migration poses particular concerns, notably: reaching migrant workers and organizing them into trade unions; ensuring solidarity between foreign and national workers, cooperating with employers to integrate migrants in multicultural workplaces; and obtaining access to policy forums to ensure that the views of men and women migrant workers are taken into account. Workers' organizations in countries of origin can assist migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers' rights in destination countries.
- 16.** Measures to combat trafficking in persons should be strengthened. These measures should include provisions for the prosecution of persons engaged in trafficking, protection of and assistance to victims, coordination between domestic and international investigations, as well as efforts to address the root causes of the problem in countries of origin, including access to regular labour migration channels and to decent work and social protection alternatives in origin countries. Countries can also contribute to these measures by developing policies to combat and prevent irregular migration.
- 17.** Promotion of policies that maximize the contribution of migration to development is another essential component of a comprehensive policy to address the global context of migration. Among urgent required components are measures to reduce the costs of remittance transfers as well as developing incentives to promote productive investment of remittances. Equitable measures need to be explored to mitigate the loss of critically skilled workers, particularly in the public sectors of developing countries. Consideration may be given to allocating development assistance to projects and programmes generating or increasing employment in decent conditions. Facilitating training and return of migrants, transfer of capital and technology by migrants, and migrant transnational business initiatives are other options that could be promoted.

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- 18.** While recognizing the sovereignty of States in determining their own migration policy, the need for international cooperation on migration, and in particular labour migration, among government and other stakeholders is manifested by the emergence of intergovernmental dialogue on migration policy in nearly every region of the world. This is evidenced by the current time-bound activities of the Berne Initiative and the Global Commission on International Migration, as well as ongoing policy dialogue activities under the auspices of the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees and the ILO.
- 19.** The ILO has for many years been actively engaged in many areas of labour migration policy, ranging from elaborating policy approaches on protecting departing migrant workers to offering advice on how to address problems of irregular migration. It manages technical cooperation projects, provides training for policy-makers and administrators, and renders advisory services on policy development, legislation, and organizational development.

An ILO plan of action for migrant workers

- 20.** A fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles, which recognizes labour market needs and the sovereign right of all nations to determine their own migration policies, including determining entry into their territory and under which conditions migrants may remain. As part of the broader commitment to promoting decent work, the ILO and its constituents agree on the desirability of maximizing the benefits to all that can flow from: (i) promoting policies that give priority to economic growth and employment; and (ii) encouraging regular labour migration. It is recognized that this goal requires a commitment to adopt national policies aimed at equal treatment of migrant workers with nationals in respect of national labour laws and access to applicable social protections, combating the exploitation often associated with migrants in irregular status, and the promotion of basic human rights for all migrants. It is clear that closer cooperation among sovereign States and the tripartite constituents can contribute towards more effective labour migration processes and protection systems. Many countries have requested technical assistance in improving their policies and legislation. In order to advance this agenda, the ILO and its constituents will carry out a plan of action in partnership with other relevant international organizations. The Office shall keep the ILO Governing Body and any other relevant ILO Committees informed of the progress of its implementation.
- 21.** This plan of action shall include:
- development of a non-binding multilateral framework for a rights-based approach to labour migration which takes account of labour market needs, proposing guidelines and principles for policies based on best practices and international standards;
 - identification of relevant action to be taken for a wider application of international labour standards and other relevant instruments;
 - support for implementation of the ILO Global Employment Agenda at national level;
 - capacity building, awareness raising and technical assistance;
 - strengthening social dialogue;
 - improving the information and knowledge base on global trends in labour migration, conditions of migrant workers, and effective measures to protect their rights;
 - mechanisms to ensure ILO Governing Body follow-up of the plan of action and ILO participation in relevant international initiatives concerning migration.

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22. A high priority should be given to capacity building and technical assistance, in line with this plan of action.

A non-binding multilateral framework for migrant workers in a global economy

23. In order to assist member States to develop more effective labour migration policies, the tripartite constituents have agreed to develop a non-binding multilateral framework for a rights-based approach to labour migration which takes account of national labour market needs. Such a framework will be drawn from, and based on, available information on policy and best practices in countries engaged in international migration, existing proposals to enhance the economic benefits of migration, relevant international labour standards, the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, and other relevant international instruments. This framework should be of particular interest to countries emerging either as origin, destination or transit countries.
24. This framework will comprise international guidelines on best practices on areas including, but not limited to, the following:
- having regard to labour market needs and demographic trends in the various countries, expanding avenues for regular labour migration;
 - promoting managed migration for employment purposes, including bilateral and multilateral agreements between host countries and countries of origin addressing different aspects of migration such as admission procedures, flows, social security, family reunification possibilities, integration policy and return;
 - promoting managed migration to address the impact of an ageing population on national economies, where appropriate;
 - licensing and supervision of recruitment and contracting agencies for migrant workers in accordance with ILO Convention No. 181 and Recommendation No. 188, with the provision of clear and enforceable contracts by those agencies;
 - promoting decent work for migrant workers;
 - preventing abusive practices, migrant smuggling and trafficking in persons;
 - protecting and promoting the human rights of all migrant workers;
 - promoting measures to ensure that all migrant workers benefit from the provisions of all relevant international labour standards;
 - promoting awareness of migrant workers' rights;
 - preventing and combating irregular labour migration;
 - improving labour inspection and creation of channels for migrant workers to lodge complaints and seek remedy without intimidation;
 - measures to reduce the cost of remittance transfers;
 - incentives to promote productive investment of remittances;

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- measures to ensure that all migrant workers are covered by national labour legislation and applicable social laws;
 - policies to encourage return migration, reintegration into the country of origin and transfer of capital and technology by migrants;
 - promoting guidelines for ethical recruitment of migrant workers and exploring mutually beneficial approaches to ensure the adequate supply of skilled health and education personnel that serve the needs of both sending and receiving countries, including through bilateral and multilateral agreements;
 - addressing the specific risks for all migrant workers, men and women, in certain occupations and sectors with particular emphasis on dirty, demeaning and dangerous jobs, and on women in domestic service and the informal economy;
 - promoting social integration and inclusion, reducing discrimination against migrant workers and measures to combat racism and xenophobia;
 - facilitating the portability of social security entitlements and other relevant entitlements through bilateral, regional or multilateral agreements in relation to regular migrants;
 - promoting the recognition and accreditation of migrant workers' skills and qualifications, as appropriate, in order to enhance their employability.
25. The ILO, in consultation with Government members, the social partners and relevant experts will develop the guidelines contained in this non-binding multilateral framework for consideration by the ILO Governing Body in November 2005.
26. Recognizing the importance of work currently being carried out in the existing international forums in the area of migration, an ILO forum may be established in partnership with other relevant international organizations to provide a platform for increased tripartite dialogue on labour migration and increased policy coherence on this subject.

International labour standards and other relevant instruments

27. ILO Convention No. 97 has been ratified by 42 countries and Convention No. 143 has been ratified by 18 countries. The Office shall undertake to identify the impediments to the ratification of these Conventions, taking into account that labour migration has evolved since their inception, and other relevant instruments have been developed at national, regional and international levels, such as the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the United Nations Convention against Transnational Organized Crime (2000) and its two associated Protocols. The ILO may take appropriate steps to better promote the ratification of Conventions Nos. 97 and 143, and the application of the principles they contain pertaining to the protection of migrant workers. This initiative should also encompass other particularly relevant standards for migrant workers, including the fundamental ILO Conventions and ILO standards concerning private employment agencies, social security, protection of wages, labour inspection, and occupational safety and health.
28. Consistent with effective management of migration, due consideration should be given to the particular problems faced by irregular migrant workers and the vulnerability of such workers to abuse. It is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that ILO instruments apply to all workers, including irregular

migrant workers, unless otherwise stated. Consideration should be given to the situation of irregular migrant workers, ensuring that their human rights and fundamental labour rights are effectively protected, and that they are not exploited or treated arbitrarily. Due consideration should also be given to the gender dimension in the application of relevant international labour standards, as well as to the various categories of temporary migrant workers, including seasonal workers.

29. Further research should be carried out on how to address some of the lacunae that have been identified in ILO standards on migrant workers, for example, through additional measures and guidelines for national legislation, policy and practice. Participants endorsed the conclusions of the 1997 Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration and called on the ILO to promote the implementation of the conclusions on migrant workers in time-bound activities.
30. The ILO shall periodically prepare and widely disseminate a report on the implementation of international labour standards relevant to migrant workers.

Capacity building and technical assistance

31. Considering the needs expressed by many member States for technical assistance in many areas of labour migration policy and administration, expanded advisory services and technical cooperation should be a key priority for the ILO to help governments and social partners formulate and give effect to national and regional policies and practices concerning labour migration. Such capacity building and technical assistance should, inter alia, further the following activities:
 - support the development of gender-sensitive national migration policies;
 - support member States in reviewing and updating laws and regulations, undertaking practical measures on labour migration, and improving the functioning of administrative arrangements and enforcement mechanisms;
 - support member States in mitigating the circumstances driving migration through the generation of decent work opportunities in countries, including through the implementation of the ILO Global Employment Agenda at the national level;
 - help build capacity for monitoring labour migration at the national level;
 - support member States in capacity building for developing national databases concerning migrant workers;
 - strengthen the capacity of workers' and employers' organizations to participate in the formulation and implementation of labour migration and integration policies, and promote equal treatment of migrant workers;
 - promote awareness and better understanding of the ILO standards relevant to migrant workers and assist member States in conforming national labour migration policies and programmes to these standards;
 - develop and promote measures and activities to combat racism, discrimination and xenophobia;
 - promote awareness of labour rights;

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- strengthen labour legislation so as to ensure that it provides labour protection for migrant workers and protects labour principles and rights identified in relevant ILO Conventions and instruments;
 - strengthen the capacity of authorities, including labour inspection services and labour tribunals, to secure compliance with labour laws, with a particular focus on the situation of migrant workers, by building transparency, knowledge and professionalism, and by sharing best practices.
32. The ILO International Training Centre in Turin should be involved in the development and carrying out of these capacity-building activities and technical assistance projects.

Development of a global knowledge base

33. Together with its constituents and, as appropriate, in conjunction with other international organizations, the ILO should continue building a global knowledge base on international labour migration, focusing its research and strengthening its knowledge management tools in the following areas:
- continued qualitative and quantitative research in areas of migration for employment, including on the gender dimensions of migration;
 - develop models for future information exchange on job openings and skills needs for foreign workers;
 - collection and dissemination of information and profiles of “best practices” in relevant categories of labour migration management and in integration policies;
 - specific assistance to constituents to improve and build capacity to collect and analyse sex-disaggregated data;
 - cooperation and exchange among countries to improve migration statistics, particularly by expansion of the ILO’s International Labour Migration Database;
 - studies of long-term labour market developments that are relevant to future migration flows, and adjustment policies to maximize mutual benefits.

Social dialogue

34. ILO support is required to assist its member States and employers’ and workers’ organizations in establishing national mechanisms of social dialogue on migration, facilitating participation of social partners in relevant international forums, preparing educational materials, providing services to migrants, conducting anti-discrimination and integration activity, and addressing other concerns.

Follow-up

35. The ILO Governing Body, as appropriate, shall periodically review the progress made in implementing these conclusions and plan of action. For this purpose, consideration may be given to the need to establish a Permanent Committee on Migration of the ILO Governing Body.

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36. The ILO is expected to participate actively in relevant international forums and to enhance cooperation with other relevant international organizations for the furtherance of this plan of action.

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The preceding Conclusions were elaborated by the International Labour Conference General Discussion Committee on Migrant Workers, meeting in 15 sittings from 1 June to 12 June 2004. Participation consisted of from 137 to 226 accredited members (modified daily) representing governments, employer organizations and worker organizations from many of the 177 member countries of the International Labour Organization. Observers were present from various UN and international intergovernmental organizations, from regional organizations and from civil society organizations, including migrant groups.

*These Conclusions were agreed to by the Committee on 12 June; **the Conclusions were adopted by consensus in Conference plenary on 16 June 2004.***

The member States of the ILO meet at the International Labour Conference held every year in Geneva, Switzerland, in the month of June. Each member State is represented by a delegation consisting of two government delegates, an employer delegate, a worker delegate, and their respective advisers. Employer and worker delegates are nominated in agreement with the most representative national organizations of employers and workers. The Conference, often called an international parliament of labour, is responsible for crafting and adoption of International Labour Standards, supervision of application of these Conventions and Recommendations, examining Global Reports covering fundamental labour rights, discussing social and labour questions of world-wide importance, adopting resolutions that provide guidelines for general ILO policy and future activities, and adopting every two years the organization's biennial work programme and budget.

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The comprehensive ILO report prepared for the General Discussion at the 2004 International Labour Conference, ***Towards a Fair Deal for Migrant Workers in the Global Economy*** (English) is available on-line at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>

The full ***Report of the Committee on Migrant Workers, ILC 2004*** which contains the above Resolution is available (in English) at:
<http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-22.pdf>

Both reports mentioned above are also available in Arabic, Chinese, French, German, Russian and Spanish languages on the ILO website.