

**CSCE HUMAN DIMENSION SEMINAR ON
MIGRANT WORKERS**

CONSOLIDATED SUMMARY

WARSAW, 21 - 25 MARCH 1994

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I. INTRODUCTION

The CSCE Human Dimension Seminar on Migrant Workers took place on 21 - 25 March, 1994 in Warsaw. The Seminar was organized by the Office for Democratic Institutions and Human Rights. This seminar was the fifth in a series of specialized meetings organized by the ODIHR in accordance with the decision of the CSCE follow-up Meeting in Helsinki 1992. The previous seminars were devoted to: Tolerance (Nov. 1992), Migration, Including Refugees and Displaced Persons (April 1993), Case Studies on National Minorities Issues, Positive Results (May 1993), Free Media (Nov. 1993).

The topic of the fifth seminar was Migrant Workers, including: their role in host societies; forms and levels of participation in the life of host society and preservation, expression and promotion of cultural identity.

The Seminar was not mandated to produce negotiated texts, but summary reports of the moderators of the three discussion groups were presented in the final plenary meeting.

II. AGENDA

1. Formal opening of the Seminar.
Opening statement by the Director of the ODIHR.
Keynote Speech by Dr. Jan Niessen, Secretary General, Churches Commission for Migrants in Europe.
2. Discussion on Migrant Workers, including: their role in host societies; forms and levels of participation in the life of host society and preservation, expression and promotion of cultural identity.
3. Summaries of the moderators and closure of the Seminar.

III. TIMETABLE AND OTHER ORGANIZATIONAL MODALITIES

1. The Seminar opened on Monday, 21 March 1994 at 15:00 in Warsaw. It closed on Friday afternoon, 25 March, 1994.
2. All Plenary meetings and Discussion Groups were open.
3. Agenda items 1, 2, and 3 will be dealt with in the Plenary. In addition, the closing Plenary, scheduled for Friday morning, will focus on practical suggestions for dealing with the issues and problems raised during the Discussion Groups.
4. Agenda item 2 will be dealt with in the Plenary, as well as in the three Discussion Groups:

DG1: Role of the host country in relation to migrant workers

Topics may include:

- economic, political, legal and social issues, cultural and educational opportunities;
- protection and promotion of the rights of migrant workers, community relations, human rights questions, promotion of mutual tolerance and harmony;
- ways and means to promote integration, including family reunion.

DG2: Migrant workers' ties with their country of origin and respect for their culture

Topics may include:

- education in mother tongue, religious education;
- links with country of origin

- problems of reintegration of migrant workers who voluntarily return to their countries;
- advantages of migrant workers for the countries concerned.

DG3: International cooperation with regard to migrant workers

Topics may include:

- migrant workers as a bridge between host countries and countries of origin.
 - cooperation between host countries and countries of origin, including in the reintegration of migrant workers;
 - existing international instruments concerning migrant workers, including CSCE documents;
 - role of international organizations with regard to migrant workers.
5. Meetings of the Plenary and Discussion Groups will take place according to the attached work programme.
 6. An ODIHR representative will chair the Plenary Meetings.
 7. The ODIHR will invite the Moderators to guide discussion in the Discussion Groups. ODIHR representatives will assist them.
 8. Standard CSCE rules of procedure and working methods will be applied at the Seminar.
 9. The following non-participating Mediterranean States will be invited to make contributions to the Seminar: Algeria, Egypt, Israel, Morocco and Tunisia.
 10. International organizations active in the field of migration, such as the Council of Europe (Human Rights Directorate), the International Labour Organization, the International Organization for Migration, the Organization for Economic Cooperation and Development, the Human Rights Centre of the United Nations in Geneva, etc., will also be invited by the ODIHR to make contributions.
 11. NGOs with relevant experience may be invited in accordance with the relevant provisions.

III. PARTICIPATION

The Seminar was attended by a total of **154 participants**. Representatives of **33 CSCE participating States**. Among the participants were also delegations from an Observer State, the Former Yugoslav Republic of Macedonia; a non-participating State, Japan, and three Mediterranean non-participating States: Egypt, Morocco, and Tunisia.

In addition, **4 international organizations** were represented: the Council of Europe, International Labour Office, International Organization for Migration, United Nations Development Programme, and United Nations High Commissioner for Refugees. **Non-governmental organizations** numbered 18.

IV. SUMMARY OF PROCEEDINGS

The Seminar was opened by the Director of the ODIHR, Ambassador Luchino Cortese. The keynote address was delivered by Dr. Jan Niessen, Secretary General, Churches' Commission for Migrants in Europe. Opening contributions were made by 10 national delegations, one international organization and 2 non-governmental organizations.

During the course of the week, three Discussion Groups met. The topics were divided as follows:

Discussion Group 1: Role of the host country in relation to migrant workers

Moderator: Professor Dr. Faruk _en, Zentrum für Türkeistudien, University of Essen
ODIHR: Elizabeth Winship

Discussion Group 2: Migrant workers' ties with their country of origin and respect for their culture

Moderator: Nora _eni, Professor at the University of Paris, French Institute for Urban Studies
ODIHR: Frederick Quinn

Discussion Group 3: International cooperation with regard to migrant workers

Moderator: Mrs. C. Hodgens, Council of Europe, Deputy to the Director of Social and Economic Affairs, Head of Population and Migration Division
ODIHR: Vladimir Dronov (CSCE Secretariat)

The closing plenary meeting was chaired by the Director of the ODIHR. The Moderators presented their reports. Statements were made on behalf of 10 national delegations and 2 non-governmental organizations.

PROTECTING THE RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES

**Key-Note Address of Dr. Jan Niessen, Secretary General
Churches' Commission for Migrants in Europe
to the
Human Dimension Seminar on Migrant Workers
Warsaw, 21 - 25 March, 1994**

I. INTRODUCTION

It is an honour and a pleasure to be invited as a key-note speaker at the seminar and to share with you some thoughts about the important matter of the position of migrant workers and members of their families.

I shall focus my contribution on existing international legal instruments which define the rights and obligations of, on the one hand, states and, on the other, migrant workers and their family members. International conventions provide for necessary minimum standards and a solid basis for national law and practices. Their implementation guarantees that states develop national policies on the basis of common principles, which, among other virtues, has the effect that policy divergencies between states will be reduced. For countries with specific social and/or economic ties to each other, such as NAFTA countries and member states of the European Union, international conventions could be used for harmonizing migration policies. For those states which have not yet developed any migration legislation these conventions could be of great value to design such legislation. Furthermore, international conventions are part of international human rights law and this is, as I shall show, of particular importance for migrant workers.

The CSCE

During the Cold War era the CSCE played an invaluable role in raising awareness for the need to protect human rights, including those of migrant workers and members of their families.

Since its inception the CSCE has called upon its participating states in Europe and North America to combat racial discrimination and also to take effective measures to grant social

and economic rights to migrant workers not less favourable than those of national workers. It has asked for fair schemes for family reunification and for flexible policies with regard to visa requirements.

When dealing with migration CSCE documents always refer to existing international instruments and intergovernmental bodies. As a platform for intergovernmental dialogue between East and West, the CSCE had no intention of designing its own migrants' rights conventions or of duplicating the efforts of existing international organisations such as the United Nations, the International Labour Organisation and the Council of Europe.

The Council of Europe

As far as the Council of Europe is concerned, this body played its own invaluable role in bringing together the peoples of Europe. The Council is devoted to the promotion of respect for human rights and social justice. It has a longstanding tradition of concern with migrant workers and their family members. Long dominated by Western European countries, it is now challenged to include Eastern European countries in its programme to foster democracy, to promote the rule of law and protect human rights. The governments of the USA, Canada and Japan participate in various working groups of the Council.

Migratory movements

Today we are witnessing large migratory movements on a probably unprecedented scale. There are an estimated 100 to 120 million migrants, refugees and displaced persons in the world, of which nearly half are women. Not

surprisingly migration ranks very high on the agenda of governments and intergovernmental fora. It is in the interest of all parties concerned that fair policies and practices are further developed and fully implemented. Co-operation between states and non-governmental organisations, both on the national and international levels, is therefore essential.

II INTERNATIONAL INSTRUMENTS

Plans of action

The World Conference on Human Rights, held last year in Vienna, stated that "great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments" (The Vienna Declaration and Programme of Action, pg 38).

The Conference called upon states to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) (Vienna Declaration and Plan of Action pgs. 45 and 53). The Convention is the most comprehensive international convention aiming at the protection of civil and political, social, economic and cultural rights of various categories of migrant workers.

Last year, also in Vienna, the Heads of State and Government of the member States of the Council of Europe committed themselves to strengthening national laws and international instruments and taking appropriate measures at national and European level in order to eliminate racism, xenophobia, anti-semitism and intolerance. In particular the need was stressed to reform the control mechanism of the European Convention on Human Rights and the importance of the European Social Charter was underlined (Council of Europe Summit Vienna Declaration and Plan of Action).

European instruments

The most important Conventions will be reviewed here (see for a more complete overview Julie Cator and Jan Niessen (eds): The use of

international conventions to protect the rights of migrants and ethnic minorities - Council of Europe, 1994).

1. Convention on the Protection of Human Rights and Fundamental Freedoms (1950 - in force since 1953)

Scope

This convention aims to protect everyone within the jurisdiction of ratifying states (and that includes migrant workers) and confers on them a right to submit their complaints of alleged violations to the European Commission of Human Rights. It contains a number of provisions relevant to movement between and within countries, and in particular to the rights of aliens.

a. The Convention prohibits the expulsion of a person from the territory of the State of which he/she is a national, and conversely ensures the right to enter the territory of the State of which one is a national.

b. The Convention provides that everyone lawfully within the territory of a State shall have the right to liberty of movement and freedom to choose his or her residence, and that everyone shall be free to leave any country, including their own.

c. The Convention prohibits the collective expulsion of aliens, essentially requiring States to carry out a reasonable and objective examination of cases on an individual basis.

d. The Convention prohibits torture and inhuman or degrading treatment or punishment, and has been interpreted to exclude expulsion of an alien to a country (normally the one of which he/she is a national) where he/she runs a serious personal risk of being subjected to treatment incompatible with the Convention.

e. The Convention protects, inter alia, the right to respect for private and family life, and in several cases the Commission has considered that expulsion of a non-national may constitute a violation of the right to respect for family life. In particular, in cases involving second-generation immigrants or immigrants who have lived for most of their lives in a "foreign" country, the Commission has held

that expulsion constituted a violation of the Convention.

f. The Convention prohibits discrimination in connection with the rights and freedoms included in the Convention on any ground "such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

Supervising mechanism

The supervising bodies of the Convention, the European Commission of Human Rights and the European Court of Human Rights, belong to the most effective bodies set up under an international convention. Individuals have the right to complain if their rights are being violated, but only if the State Party against which the complaint has been lodged, has declared that it recognises this right.

Over the years many cases have been taken to the Commission and the Court and by now there exist an impressive body of jurisprudence. States have been obliged to withdraw certain measures or adapt national legislation.

2. European Social Charter (1961 - in force since 1965)

Scope

The Charter (and the Additional Protocol) defines the social and economic rights, such as safe and healthy working conditions, fair remuneration, vocational training, social security, social and medical assistance and social protection and benefits. A number of beneficiary groups are identified, among them migrant workers and their families. The Preamble insists that the enjoyment of social rights must be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin.

Articles 18 and 19 of the Convention specifically concern migrant workers. Article 18 is concerned with the right to engage in a gainful occupation in the territory of other Contracting Parties, and to that end provides for a liberal application of existing regulations, simplification of formalities and reduction of dues and

charges, liberalisation of regulations governing the employment of foreign workers, and the right of nationals to leave the country in order to engage in a gainful occupation in the territories of other Contracting Parties.

Article 19 is concerned with the right of migrant workers and their families to protection and assistance. It comprises 10 undertakings. The first three paragraphs are designed to help migrant workers in a very general way (information, combating misleading propaganda, travel assistance, reception facilities, co-operation between social services, etc). The next six paragraphs provide for specific commitments on: treatment of migrant workers no less favourably than that of nationals, in a range of areas such as employment conditions, trade union membership, housing (paragraph 4), taxation (paragraph 5) and legal proceedings (paragraph 7), family reunion (paragraph 6), guarantees against expulsion (paragraph 8) and transfer of earnings and savings (paragraph 9). The final provision concerns the extension of all these guarantees to self-employed migrant workers.

The Appendix adds a very important provision concerning family reunion, namely that the term "family of a foreign worker" is understood to mean at least "his wife and dependent children under the age of 21 years". The "case law" on the European Charter (see below) stresses the dependency of children and there are proposals to change the phrase "children under the age of 21 years" to children who are minors according to the law of the receiving country.

Supervising mechanism

States Parties have to submit reports to the Committee of Ministers which shall be examined by a Committee of Experts. In a final stage the Committee of Ministers vote on the report and vote on certain recommendations to a State Party. This procedure cannot be likened to judicial control. Consequently, the interpretations are not legally binding on the contracting parties. Notwithstanding this fact, states try to avoid appearing as not fully and correctly implementing the Charter during the review process and in the reports. Therefore, the interpretations and also the recommenda-

tions of the different committees are looked on as "judgements and rulings", acquiring in this way some binding force. The "case law" of the Social Charter, although only a compilation of interpretations given by the supervisory bodies, has become an authoritative source for its proper interpretation and practical implementation.

3. European Convention on the Legal Status of Migrant Workers (1977 - in force since 1983)

Scope

The Convention is based on the principle of equality of treatment between migrant workers and nationals of the host country. The provisions relate to the main aspects of the legal status of migrant workers, and especially to recruitment, medical examinations and vocational tests, travel, residence and work permits, family reunion, housing, conditions of work, the transfer of savings, social security, social and medical assistance, expiry of the contract of employment, dismissal and re-employment, and preparation for return to the country of origin.

Supervising mechanism

A consultative Committee is set up under the Convention to monitor developments in national legislation and practice in areas covered by the Convention. The Committee shall draw up reports on laws and regulations in force in the States Parties in respect of matters provided for in the Convention. The Committee may also make recommendations and proposals to improve the application of the Convention.

4. Convention on Participation of Foreigners in Public Life at the Local Level (1992)

Scope

The Convention was adopted by the Committee of Ministers and opened for signature on 5 February 1992. The intention of the Convention is gradually to extend real civil and political rights at local level to foreign residents. The provisions of the Convention fall into three principal sections: freedom of opinion, assembly and association; consultative bodies to represent foreigners at local level and the right to vote in local authority elections, after five years residence in the host country, and to stand for election.

III. IMPLEMENTING INTERNATIONAL

INSTRUMENTS

State of ratification

European conventions protecting human rights, combatting racial discrimination and promoting equal treatment of migrants are fairly precisely formulated. Moreover, these conventions are binding upon states which have ratified them. Unfortunately, too many countries have not ratified them, or while ratifying made substantial reservations, or do not fully implement them.

States could very well face a credibility gap when, on the one hand, they design international instruments and, on the other fail to implement them. Therefore, it is not so much a matter to add new conventions as to have the existing ones fully implemented and their supervisory mechanisms respected.

This is not to say that states are not confronted with serious impediments which make ratification and implementation difficult. I will deal with a few of these impediments and comment briefly on them.

Impediments

1. Present social climate

In the eyes of the public, migrants workers are increasingly seen as people who cause problems instead of as people who contribute economically and culturally to receiving societies. In many countries there is a climate in which flourishes "our people first" feelings and ideologies, racial discrimination and racial violence.

Usually migrant workers live in urban and industrial areas. The social and economic situation in these areas, with high numbers of unemployed people, the number of foreigners who have settled there in a relative short period of time and the great diversity of cultures, complicated considerably the integration of migrants and their full participation in society. In these urban areas live also indigenous people who are often in a weak socio-economic position. Their resistance to foreigners is not necessarily racist, but is often an expression of their frustration that they have to share the scarce welfare, education and housing facilities with even more people.

In this climate it is more difficult for governments to adopt (international) standards promoting equal treatment of migrant workers and

members of their families.

However, by securing the economic, social and political position of migrants governments not only give a good example to the general public but also prepare the ground for combatting racism with legal means.

2. The political climate

Since the end of the East-West divide, governments have expressed the view that human rights, democracy, the rule of law and economic freedom must be seen as the foundation for peace, security and stability in the world. In the debates on a new development policy there is a similar emphasis on human rights, democracy, rule of law and good governance.

In other words development, security and peace are linked with respect for human rights, democracy and the establishment of the rule of law. In practice this means, however, that migratory movements are increasingly viewed from the angle of security and stability within and between states. Internal and external security and stability are undermined by large and unorderly migratory movements and the settlement of migrant workers (new ethnic minorities as they are called in many Western European states). At the national level social security is also under pressure because of the high unemployment rate in many European and North American countries. This makes it increasingly difficult for welfare states to absorb the great numbers of immigrants in a short period of time and at the same time to maintain the same level of social security. The insecurity is, understandably, felt mostly by those who are unemployed and to a great degree dependent on welfare schemes.

It is the tasks of governments, and NGOs for that matter, to explain that it is the greatest threat to societies and against the interests of everyone involved to create societies in which considerable numbers of people are excluded from their civil, political, social, economic and cultural rights. Therefore, the implementation of international instruments should be accompanied by educational programmes, such as those proposed by the Vienna Plan of Action of the Council of Europe Summit.

3. Perception of character of conventions

States sometimes see international conventions as instruments for immigration policies. Consequently, they do not respond to the preoccupation of governments to reduce or control

(clandestine) migratory movements.

However, conventions do not touch upon the rights of states to establish the criteria governing admission of migrant workers and members of their families. On the contrary, ratifying states are bound by provisions of conventions with respect to matters related to their legal status and treatment of migrant workers and members of their families.

4. Perception of the effects of ratification

Governments may be of the opinion that granting rights to migrant workers only attracts more. The official policy of most industrialised countries is to stop the recruitment of foreign labour and limit, as far as possible, the reunification of their families. The ratification of a convention granting rights to migrants does not fit into this policy.

However, it is not so much liberal policies as economic necessities which attract migrant workers. Quite often they find employment. The lack of protection of their rights pushes them only into the margins of receiving societies or into clandestinity.

The UNFPA's report "State of the World Population 1993" rightly states that: "If the goal is to reduce migration pressures through development, it will be essential to increase the capacity but reduce the need to migrate".

5. Multiplication of instruments

Some governments may argue that the multiplication of international conventions leads to a very complicated body of international law, possibly with contradicting elements. This would make it difficult to incorporate international human rights standards into national legislation. Others would argue that general human rights instruments are applicable to everyone within the jurisdiction of a state, irrespective of their ethnic or national origin.

However, the special situation of migrant workers in receiving countries and the special relationship these workers have with their country of origin justify that specific human rights instruments are designed for them. Moreover, careful study of all the available instruments, from the United Nations (the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on

the Rights of All Migrant Workers and Members of their Families), the International Labour Organisation (ILO Convention no. 75 and no. 143) to the Council of Europe (see above), will lead to the conclusion that, although there is considerable overlap, they often cover different areas and different categories of migrants in terms of their nationality. In other words all these instruments can be used in a complimentary way.

IV. SOME FINAL REMARKS

Given the number of people involved and their vulnerable position, there is enough reason to include the concern for the protection of the human rights of migrant workers and their families in the overall work in this field. International instruments are therefore of crucial importance. They highlight the human dimension of the phenomenon of migration and provide states with clear guidelines for national policies. They also offer an excellent opportunity, through their supervisory instruments, to review national policies and measure these policies against international standards. The relevant treaty bodies of the United Nations, the International Labour Organisation and the Council of Europe have, over the years, gained considerable experience and expertise in this area.

The Heads of State and Government of the Council of Europe expressed their resolve to foster democratic security and favoured co-operation in the field of human rights between the Council of Europe and the CSCE. Arrangements are to be concluded with the latter, including its Office for Democratic Institutions and Human Rights.

The CSCE hopefully continues to call upon all its participating states to sign and ratify the relevant conventions. The Council of Europe may consider opening the relevant European conventions for ratification by states who are not members of the Council. In addition the CSCE and its Office for Democratic Institutions and Human Rights could assist states to ratify international instruments and to design national legislation in cases where such legislation does not yet exist, or adapt existing legislation in order to respond to the new situation in Europe and North America.

ODIHR could, in close collaboration with the Council of Europe, organise regional seminars bringing together the expertise of the Council of Europe, the CSCE, national experts and NGOs. Also ODIHR could, together with the

Council of Europe, sponsor and facilitate the organisation of regional seminars which would provide NGOs with the necessary knowledge of international instruments and assist them to enter into a dialogue with governments on designing and implementing national migration policies according to international standards. Such a seminar was organised last year by two NGOs and under the patronage of the Secretary General of the Council of Europe. A report of that seminar is available at this seminar.

Let me conclude with the words of Eleanor Roosevelt, a life long advocate of human rights worldwide and representative of the government of her country at the United Nations and its Commission on Human Rights. They perfectly summarize the aims to be achieved.

"Where, after all, do universal human rights begin? In small places, close to home - so close and so small they cannot be seen on any maps of the world. Yet they *are* the world of the individual persons; the neighbourhood ...; the school or college ...; the factory, farm or office. ... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

(Eleanor Roosevelt, 1958)

Discussion Group 1

Migrants and Their New Homelands: Opinions about Migrants in their Host Countries

Moderator: Professor Dr. Faruk _en, Zentrum für Türkeistudien, University of Essen

In the framework of our working group, one may emphasize the following points:

1. First, the representatives of the most important host countries for migrants have presented the current situation in their countries. The classical countries to which immigrants have traveled, like the USA and Canada, have already explicated the premises for their immigration policy. The new de facto immigrant countries like Germany, Holland, Great Britain, Austria, Switzerland, Sweden have also presented the most recent developments in their countries. One could not learn too much about the developments in France because of the absence of the French delegation.

2. One could learn about the initial experiences of new host countries, which previously had been countries of departure. Countries of the Mediterranean region like Spain, Italy, Greece, and Turkey belong to this group of countries. While Greece has been undergoing experience with Albanian workers, various nationals from Iran, Romania, and Pakistan work in Turkey.

3. The problems of migrants in the industrial countries were presented comprehensively by the representatives of Morocco, Tunisia, Turkey, Albany, and the Former Yugoslav Republic of Macedonia.

4. Migration movements within the Eastern European countries as well as within the newly founded Black Sea Economic Region (BSER) were treated only marginally.

5. The assurance of communal voting rights in countries like Sweden, Holland, Denmark, Ireland and the consideration of dual-nationals were important elements of the discussion. The desire to assure communal voting rights to all migrants in Europe was mentioned many times.

6. Neo-racist tendencies in Europe, the growing level of xenophobia, and attacks against the Turkish minority by right-wing extremists in Germany, were also very important elements of our working group.

7. The desire among some participating states for the High Commissioner to become involved in the future in the problems of migrants was expressed many times.

8. Greater involvement by the CSCE is to be expected as a possible task for this organization in the area of migration within the realm of human rights problems.

9. More extensive discussions were held about the position of non-European Union (EU) foreigners residing within the European Union. Of the some 17 million foreigners residing in the European Union, 10 million come from non-EU countries. Concern was expressed that they cannot take advantage of the three fundamental liberties offered by the European Union, viz. the freedom of labor movement, the freedom of capital, and the freedom of services. In addition to these harms, they suffer greatly in the framework of the EU-internal market because of the provisions contained in the Maastricht Agreement. While EU foreigners may vote in the 1994 European Parliament Elections and while they will be able to vote in communal elections in individual countries starting from 1997, non-EU foreigners do not have this possibility. Many representatives of non-EU foreign countries perceive these regulations as discriminatory. The ILO representative also presented the discrimination of foreigners in various areas, in practice as opposed to the letter of the law and ILO standards.

10. An additional wish was expressed that international cooperation between Western European countries and the countries of origin be undertaken with respect to illegal workers.

11. A further wish was expressed for the development of new regulations pertaining to migration underway in several states.

12. Furthermore, the strengthening of an integration policy among the host countries was demanded. Insofar as it is possible, the sending countries should also attempt to exert efforts to integrate their citizens in foreign countries. UN migrant worker policies and the results of ILO research concerning migrants should be taken

into account more extensively by the *de facto* countries of destination.

13. A particular wish was expressed that a better and newer terminology concerning migration be created. CSCE should perform concrete tasks in this area.

14. The fact of a multi-cultural society should be recognized more fully by Western European nations.

15. In this area the representatives of the classical destination countries like the USA and Canada have offered to cooperate with the European countries.

16. In general, the seminar was considered to be useful. According to general opinion, international seminars pertaining to migration such as this one should be held more often. However, some states expressed the concern that in future seminars, overall constructive criticism rather than criticism directed at individual states play a greater role in discussions.

17. In particular, the drive towards regional seminars was very great. More regional seminars should take place under the auspices of CSCE according to the seminar model developed for Almaata in April 1994. The following cities were proposed as future seminar locations: Bonn, Germany; Antalya, Turkey; and Sofia, Bulgaria.

18. Furthermore, the wish was also expressed that non-governmental organizations participate in these seminars.

Discussion Group 2

Migrant workers' ties with their country of origin and respect for their culture

Moderator: Nora _ENI

Il est peut être aujourd'hui temps de détacher du statut du travailleur immigré la notion, le sens de présence provisoire. Lorsque, dans certains pays, nous en sommes à la troisième génération de l'immigration, ne devient-il pas difficile de soutenir qu'il s'agit là de présence temporaire. Or, la façon dont l'objet de discussion du groupe II a été formulé dans la présentation du programme du séminaire dénote une conception quelque peu oubliée de cette évolution et de la fin du statut temporaire de l'immigration européenne; celle consécutive à la Seconde Guerre Mondiale. En effet, l'hypothèse implicite qui soutient l'agenda du groupe II semble ignorer ce que les différents délégués ont réitéré dans leurs témoignages. Ainsi, la délégation turque nous a donné les chiffres de la progression des retours qui montrent qu'à partir du sommet atteint en 1982 les immigrés rentrent de moins en moins dans leurs pays d'origine. Le délégué de la Hollande a fait part de son expérience en nous confiant qu'une fois la réunion familiale accomplie c'était le point de non-retour franchi.

Cette évolution, notre groupe de discussion l'a si peu oubliée qu'il a commencé ses échanges par une analyse sémantique des mots qui désignent, dans les différentes langues, cette catégorie de personnes. "Travailleurs immigrants" par exemple fait référence à un processus permanent de mobilité et nous savons que ce terme ne correspond pas à l'histoire de l'immigration européenne de ces 30 dernières années. A ce sujet les Etats Unis ont témoigné de la distinction qu'ils font, eux, entre les immigrés régulièrement installés chez eux, avec un permis de travail et qu'ils appellent "permanent resident" et les autres étrangers dont le statut apparente plutôt à des immigrants saisonniers. Le statut des personnes que nous désignons en Europe du mot d'immigrés et sur lesquels nous travaillons dans ce séminaire est tout à fait proche de cette notion de résident permanent. A ceci près, qu'il n'est pas indifférent d'avoir une désignation qui reconnaît la permanence. C'est autre chose que le vocabulaire fait de termes comme "guest workers" ou "host countries" ou encore "home countries" qui justement entretiennent l'ambiguïté. Aucune des délégations participantes n'a prétendu que le changement de dénominations non adéquates entraînerait des politiques plus appropriées au

caractère permanent de l'immigration en Europe occidentale. Mais une transformation terminologique est susceptible de contribuer à dissiper un premier voile de fumée. C'est sous l'éclairage de ces contacts que se sont déroulés les débats de notre groupe de discussion. Nous avons établi que nous avons pour sujet l'enseignement, fait à des enfants, de la langue, de la religion, de la culture du pays d'où leurs grand-parents ou leurs parents étaient issus. Au sujet de la langue il est rapidement apparu, notamment à travers les questions que se posait le représentant de la Suède, que parfois cet enseignement, le temps qui était pris pour sa dispense pénalisait les élèves, les retardait. Et ceci dans la mesure où cela était pris sur le temps du cursus pendant lequel les enfants autochtones, eux, continuaient à progresser dans d'autres branches.

Aux interrogations de la Suède a fait écho le témoignage d'un ONG de la Hollande qui nous a mis en garde contre une mystification de l'enseignement en langue maternelle surtout si cela distrait les élèves du programme que leurs petits camarades du pays d'accueil ont, eux, tout le temps de poursuivre tranquillement. En fait, ces questions nous ont induits à revenir sur la nature des objectifs d'un tel enseignement. S'il est vrai que le but principal est de promouvoir les conditions d'une meilleure intégration, on peut alors se poser la question de savoir s'il ne vaut mieux, dans certains cas, utiliser les moyens supplémentaires mis à la disposition des élèves immigrés pour combler le déficit qu'ils peuvent avoir dans l'apprentissage et l'enseignement dans la langue du pays d'accueil. Mais alors se pose la question, à charge émotionnelle intense, du danger d'assimilation. Nous avons ainsi été induits à reprendre la définition de ce terme pour plus de clarté. Est-il légitime que ce mot d'assimilation fonctionne comme un repoussoir absolu? De quoi s'agit-il en fait? Plus que de la dilution, voire de la disparition de la culture d'origine, il s'agit du déplacement du lieu de son expression. L'assimilation désigne le fait qu'une culture, je dirais minoritaire pour aller vite, et les intérêts de ceux qui partagent cette culture ne s'expriment plus en tant que groupe ou en tant que communauté, mais deviennent une expression individuelle. Pour mieux comprendre ce terme il faut également faire une distinction entre privé et public. Le lieu d'expression des particularismes culturels, linguistiques ou

confessionnels se déplace vers la sphère privée dans un processus d'assimilation. Ainsi lorsqu'il a été question du rôle des autorités des pays d'origine dans le maintien des liens avec leurs émigrés un ONG représentant une association d'immigrés turcs en Allemagne a exprimé ceci : " Les liens avec les pays d'origine existent! Ils se vivent au quotidien. Personne d'autre que les individus concernés doit désirer de la nature, de l'importance et de la fréquence de ces liens. C'est comme je veux, et quand je veux!"

Voici une façon de vivre sa différence sans la nier mais sur le mode de l'assimilation. Pourquoi cette formulation dénote-t-elle du mode assimilatoire. Parce qu'elle fait de la question des liens avec le pays d'origine, donc également de la question de l'enseignement de sa langue, de sa culture, sa religion un problème de choix individuel. Dans un processus d'intégration abouti vous exprimez vos choix individuellement en utilisant vos droits démocratiques de citoyens. Vous votez, vous êtes électeurs, vous êtes éligibles. C'est en l'absence de ces droits de citoyenneté que vous exprimez vos choix par l'entremise de groupes, de communautés, voire par l'entremise des autorités du pays d'accueil. (Vous pouvez également faire les deux, mais à ce moment là vous êtes dans le cas de figure d'une société à tradition pluriculturelle comme le Canada dont la constitution prévoit le maintien des particularismes) Donc il n'y a aucun danger "d'assimilation" lorsque les droits de citoyenneté ne sont même pas reconnus et que donc l'intégration reste à faire. Ainsi , et pour revenir à l'enseignement, il est apparu clairement, et c'est notre suggestion, que les enseignements particuliers en langue ou religion du pays d'origine devaient avoir lieu en dehors des heures de cours et que les enfants d'immigrés ne devaient être distraits sous aucun prétexte du cursus qui s'applique aux autochtones. Deuxièmement, il nous est apparu également important d'exprimer que ces cours ne devaient avoir aucun caractère obligatoire, qu'ils ne devaient être imposés ni par les autorités du pays d'accueil ni par les instances du pays d'origine qui souvent sont les instances qui fournissent les instructeurs. Q'est à l'occasion de la discussion sur les retours éventuels au pays d'origine et sur les responsabilités des Etats respectifs que nous avons pu prendre conscience qu'une grande réserve à l'égard de l'assimilation pouvait, quelque fois, entraver le processus d'intégration que chacun appelle de ses vœux. Il pourra, en effet, paraître paradoxal parfois de promouvoir l'intégration de ses ressortissants dans le pays d'accueil et de les maintenir en même temps dans un projet de retour. Mais revenons un

instant non plus à l'assimilation mais à l'intégration . Qu'est-ce sinon un processus d'obtention progressive de ses droits politiques, légaux et qui doivent déboucher sur la jouissance de tous les droits de citoyenneté. Ainsi, toutes les mesures qui visent à promouvoir l'égalité et à protéger les droits des immigrés resteront vaines tant que ce préalable ne pourra s'inscrire à l'ordre du jour dans la trajectoire du migrant. Si nous avons pu constater la volonté de certains pays d'accueil d'intégrer, dans ce sens, leurs immigrés, d'autres ne manifestant point cette volonté. Quoiqu'il soit loisible à tout individu qui a vécu plus de 10 ans en Allemagne, de demander à être naturalisé, le fait que cet Etat exige, comme préalable, le renoncement à la nationalité d'origine entrave gravement la naturalisation de la majorité des immigrés qui résident régulièrement en Allemagne depuis bien longtemps. Or, comment protéger, promouvoir l'égalité de ceux qui sont privés de leurs droits les plus élémentaires; ceux de la citoyenneté. La solution est de ne pas soumettre l'acquisition de la nationalité allemande à la résiliation préalable de la nationalité d'origine. Et c'est en cela que consiste notre proposition. Un point important des orientations que j'ai proposées en introduisant le débat dans notre groupe de discussion, n'a pu qu'être suffisamment développé. Je prends l'opportunité de le dire ici et j'en aurai terminé. En débattant des thèmes qui nous ont retenus dans chacun des trois groupes il nous aura fallu ne pas perdre de vue que les problèmes que nous évoquons ici se déroulent sur un fond d'unification européenne et de travaux en cours pour un homogénéisation des législations nationales. La suppression des frontières, la libre circulation des citoyens des pays membres de l'union européenne, induisent un questionnement, grave, sur les conditions qui seront faites à ceux des migrants originaires des pays tiers. Comment concilier les impératifs du respect des droits de l'homme qui s'applique à tous, et les nouvelles conditions européennes susceptibles d'accentuer les différences et la ségrégation entre citoyens, membres de l'union européenne, et des hommes et des femmes qui ne le sont point.

Discussion Group 3

International Cooperation With Regard To Migration

Moderator: Mrs. C. Hodgens

Having agreed that it should focus its attention on migration of persons who are, have been, or are to be, engaged in a remunerated activity in a state of which they are not nationals, the Discussion Group held a wide ranging debate showing how multifaceted the migration phenomenon is.

At its first session the Group considered questions relating to the necessary management of migratory flows to and between CSCE states, in a humane and effective way. In this context, it was led to examine also the situation of irregular (undocumented) migrants and of persons who try to misuse asylum procedures, since previously receiving countries had to adopt more restrictive policies with regard to immigration of labour.

One must therefore exercise care in the use of terms to designate the various categories of migrants.

Several participants drew attention to the fact that measures to stop massive or irregular immigration have an impact on lawfully residing migrants.

Indeed, the present resurgence of acts of racist violence and harassment, notably against migrant workers and their families was in the foreground of all debates. The need to eliminate such attitudes by ensuring a better protection of migrant workers and their families at national level, but also by taking appropriate measures at the international level was unanimously stressed from the outset. ILO's programme to combat discrimination against migrant workers and the Council of Europe plan of Action on combating racism, xenophobia, antisemitism and intolerance, were considered as highly relevant to the topic.

From the statements of some participants, it emerged that this need for better protection was also felt necessary because of special arrangements between some countries which establish closer links - eg. European Economic Area - which place nationals of third countries into a less favorable position than other migrant workers.

Considering the lack of european immigration

policies, not to speak of a european policy, and of long term strategies, the participants stressed the need for a comprehensive approach to migration challenges and the need to develop harmonized policies on matters both such as admission and integration.

Special reference was several times made to the possibility of offering more opportunities for short term employment abroad, directed to all categories of workers.

When addressing detailed aspects of policies certain countries are conducting in respect of migration, the Group dwelt particularly on measures to combat uncontrolled migration and exchanged information on :

i) the role of sanctions against employers, against traffickers, and in certain instances against the workers - who however often are embarked innocently into the process;

ii) examples of successful operations of regularization (amnesties) of undocumented immigrants.

An N.G.O representative specially called attention to the traffic of women from other continents.

It was felt that better knowledge should be gathered on these uncontrolled migrations, (as advocated by the Budapest conference).

A proposal from a participant of a central european country to give incentives to employers employing frontier workers gave rise to a lively debate, as such measures were likely to create unfair competition with nationals. This showed how carefully any measure must be thought out.

Similarly, an observation on the role of unemployment benefits (their high level and length of service) in the persistence of unemployment was severely challenged.

Observing that effective management of international migration depends increasingly on international cooperation, real commitment and mutual support between all countries concerned, the Group considered the role of aid

to development.

The Group felt that together the governments should seek to reduce the root causes of emigration. Increased effort to achieve sustainable economic and social development was seen as a means of alleviating massive outflows of people and, in some cases, if the persons concerned so wish, to assist return of migrants into their country of origin. See, for example, the role of IOM.

Thus, the second session was entirely devoted to this topic. It was clear that all participants felt that it is in the interest of countries of origin as well as of receiving countries, to see that the ways are found to ameliorate the crises which lead to migration flows. Therefore migration policies should be considered as closely connected with those related to international cooperation. Many examples of projects involving host countries and countries of origin were given. Most included not only financial aid, but professional training (including in managerial and accounting skills) and technical cooperation. All of them were well targeted e.g. on areas or villages of origin of migratory flows. This relatively new form of aid to development policy needs the support of governments of countries of origin. Migrants wishing to return should be better informed and guided about feasible projects.

Several participants felt that more information on such projects should be circulated.

The other sessions were devoted to the topics:

- existing international instruments concerning migrant workers,
- the role of international organizations with regard to migrant workers.

The participants welcomed information on a number of instruments¹, some of which were described as "too perfect" and many of which have a supervisory mechanism. These Conventions, together with a number of other covenants and international agreements, constitute a full set of instruments aimed at, or useful for, the protection of migrant workers and their families.

Recognising, however, that most of these instruments remain largely unratified, it was suggested that States might consider ratifying those open to them and that the Council of Europe might look into ways of opening closed conventions to a larger circle of States.

One delegation informed participants of its intention to propose at the Budapest Review

Conference that CSCE participating States elaborate further commitments relating to migrant workers based on provisions of these instruments. It also announced that, in line with the Declaration on Aggressive Nationalism, Racism, Chauvinism, Xenophobia and Anti-semitism, it would express the wish that the High Commissioner on National Minorities pay attention to the situation of migrant workers.

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In the course of the discussion several delegations stressed the utility of exchanges of views such as those which were taking place during the Seminar. An idea was articulated that regional seminars on similar topics, sponsored by the CSCE or other organizations, might even prove more promising.

¹ The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (UN 1990); ILO Convention n. 97 concerning Migration for Employment (Revised) (1949); ILO Convention n. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975); The European Convention for the Protection of Human Rights and Fundamental Freedoms and the proposed additional Protocol complementing it in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities; The European Social Charter; The European Convention on the Legal Status of Migrant Workers; The European Convention on Participation of Foreigners in Local Public Life; The proposed framework convention specifying the principles which contracting States commit themselves to respect in order to assure the protection of national minorities to be drafted by a Council of Europe Expert Committee and will be open for signature by non-member States.