

GLOBAL CONSULTATIONS ON
INTERNATIONAL PROTECTION

2nd Meeting

**THE ASYLUM-MIGRATION NEXUS:
REFUGEE PROTECTION AND MIGRATION
PERSPECTIVES FROM ILO**

I. PURPOSE OF PAPER

1. This paper is intended as a contribution to the discussion of the nexus between refugee and migration issues. It is presented by an agency of the United Nations system with a complementary mandate to UNHCR, from the perspective of a standards-based international organization committed to uphold protection of human rights of migrant workers and members of their families defined in ILO and other international norms.

2. ILO addresses the asylum-migration nexus in a mandate framework in the context of accelerated and globalized human mobility. Three fundamental concerns define this framework: (1) human rights are universal, indivisible and inalienable: they apply to all persons, notably refugees and migrants; (2) economic factors, particularly today globalization, directly affect migration phenomena and responses to it; and (3) migration can generally be seen as beneficial in economic, social and cultural terms, both to countries of origin and of destination.

3. ILOs fundamental mandate to promote achievement of decent work for all working people, together with its specific mandate regarding labour migration, compel ongoing examination of what drives labour migration, what characteristics migratory movements take, and what conditions affect non-national workers in host countries.

4. In this context, ILO finds a number of issues where refugee and asylum concerns overlap with issues it addresses in its activities to assess and analyze labour migration worldwide, protect rights and ensure decent work for all migrant workers, and assist governments and social partners in elaborating and implementing policies and practices.

II. OVERVIEW OF MAIN ISSUES

5. Recent ILO estimates indicate some 80 to 97 million migrant workers and members of their families worldwide, a major portion of the total estimated number of 150 million persons residing in foreign countries.

6. Most available data on migration flows does not obtain, assess or evaluate information on the causes or motivations for departure or movement of persons involved. The significant exception is data on usually self-identified refugees and asylum seekers. However, considerable discussion has already taken place regarding so-called “mixed flows” and multiple motivations affecting decisions to depart. In recent decades large numbers of persons

in neighboring or third countries have departed or originate from situations and countries experiencing civil war conditions, widespread violations of human rights, and generalized violence. Nonetheless, in some such situations, few persons seek refugee or asylum status; far more appear as migrant workers, often in irregular situations.

7. It appears plausible to suggest that a considerable number of such persons may in fact be in refugee or refugee like situations, but for a variety of reasons choose not to identify themselves as such. This appears to be the case when general presumptions and/or mass determinations of refugee situations are not made in contrast to when they are. For example, hundreds of thousands of people left the countries of Southern South America following installation of military dictatorships during the mid-1970s; few applied for refugee status in neighboring countries or elsewhere. In contrast, many people fled Indochinese countries following installation of Socialist regimes in the mid-1970s; most were presumed to be refugees when they arrived in neighboring countries, and hundreds of thousands were subsequently resettled elsewhere.

8. Similar, and perhaps more widespread situations appear to exist in different regions today. Large numbers of persons have left certain Asian, African and Central and South American countries experiencing extensive civil war conditions and/or widespread repression of rights. Few of these nationals seek asylum or refugee status in neighboring countries or elsewhere; by contrast many are counted as migrant workers, or irregular migrants.

9. Anecdotal data and some research indicates four reasons to explain this ambivalent phenomena: (1) persons arriving from certain countries are publicly characterized as potential subversives, combatants or otherwise partisans in conflicts in home states; applying for asylum is seen to only reinforce suspicions and to put the persons own security and well-being at risk; (2) in some regions, it is commonly assumed that there is close cooperation between security forces of countries, and that data on asylum applicants or refugees is shared between the host and home countries, potentially putting relatives and associates remaining in the home country at risk of investigation or worse by authorities; (3) in a considerable number of countries, application for asylum means denial of permission to work or even detention until the claim is decided; opportunities for labour migration and employment --legal or irregular-- offer possibilities for safer departure, transit and possible employment elsewhere, all the more so in the context of historical migration patterns providing for communities of nationals in host countries or when there are possibilities for contract employment in destination countries.

10. It remains impossible to suggest dimensions of such phenomena, but data from some situations suggests it could be very substantial. It appears nonetheless likely to be a large-scale phenomena, one which might eventually be contrasted with converse situations where persons not fleeing persecution seek asylum or refugee status.

11. Once persons are admitted by States and are granted a temporary protection status or a refugee status which confers authorization for employment, such refugees and asylees generally seek employment and face situations similar to regular non-national migrant or immigrant workers. They thus face issues of access to employment, of decent work conditions when employed, of protection of labour rights, etc. It is clear from recent research that refugees frequently face similar treatment as, and are not significantly differentiated from, other migrants and immigrants in labour and administrative law, by employers, and by the public at large.

12. It has been clear in the rising xenophobic violence in countries in all regions that most manifestations of anti-foreigner hostility make no distinction between status or motivations of their targets.

13. An ILO project to document discrimination and promote remedies to discrimination in employment against migrant and ethnic minority workers found levels of discrimination in over 30% of applications for employment by persons of non-national or minority profiles. The data would suggest that this discrimination was similar for persons of refugee background.¹

14. The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance to take place in Durban in September has given new attention to the migrants and implicit in denial of their human rights. ILO is pleased to be already working in close cooperation with UNHCR as well as IOM and the Office of the High Commissioner for Human Rights in a common approach to combating racist and xenophobic hostility directed at non-nationals, including migrants, refugees, and asylum-seekers.

III. MIGRATION MOTIVATIONS AND PROTECTION

15. Recent research sponsored by ILO suggests that certain features of globalization may be accelerating migration pressures, pressures that make debatable the matter of choice in people's decisions to leave situations where economic or social conditions make safe and dignified life difficult or impossible.

16. According to this research, "the evidence so far available on the impact of globalization points to a likely worsening of migration pressures in many parts of the world processes integral to globalization have intensified the disruptive effects of modernization and capitalist development. While acknowledging that this has been different from one country to another, "the general effect has been a crisis of economic security."²

17. These considerations suggest an observation regarding the international human rights regime and international refugee and migration standards and policies. Many people are displaced today due to conditions that implicitly or explicitly constitute violations of their economic, social and cultural rights, both individual and collective. However, current international law has tended to recognize only victims of violations of certain political rights -- refugees -- as needing protection and assistance. Contrary to the notion of *indivisibility*, those victims facing denial of economic, social and cultural rights that often threaten their very survival, as communities as well as individuals-- have no such recognition.

18. As an outcome of political and historical factors, the international refugee protection regime was set in place based on a definition of refugee contained in the 1951 Convention and 1967 Protocol on the Status of Refugees. The refugee regime is based on a definition which recognizes the seriousness of violations of political and civil rights, and the need for international protection of victims of such violations.

¹ ILO: *Challenging Discrimination in Employment: Summary of Research and a Compendium of Measures*. Geneva. October 2000.

² Stalker, Peter: *Workers Without Frontiers*. International Labour Organization. Geneva, 2000. p. xi-x.

19. However, no such protective measure exists for people who may be compelled to leave their homelands as a consequence of violations of economic, social and/or cultural rights, where victims perceive that survival in minimally acceptable conditions is at risk or impossible.

20. ILO notes nonetheless that conventional wisdom over the last two decades has been that opening a discussion of expanding or changing the definition in the UN Refugee Convention would be counterproductive. Given the actions on the part of a considerable number of States to limit the scope of application of the refugee definition, such concerns remain well-founded.

21. It is clear that a polarized perception dividing ‘bona-fide’ refugees and other persons in migration is not helpful, either for determining who may need protection in terms of the refugee convention definition or who may in any case require protection of basic human rights. Labels of “gate-crashers,” “abusive claimants,” opportunity seeking migrants, economic migrants generally dismiss the nuances and complexities of conditions and motivations for migration, and avoid any consideration of whether some persons they are applied to might have rights based motivations for displacement.

22. Such characterizations also impede debate on wider questions of application of a human rights framework generally to migration and migrants. The sometimes appropriation of the term “protection” to refer to the specificity of provision of *protection* to refugees from refoulement under the terms of the 1951 Convention, also has at times obscured broader application of this term in addressing the *protection* of the rights of all migrants.

IV MIGRATION MANAGEMENT

23. A fundamental issue in international migration today, and thus in the asylum-migration nexus, may be the contention between basing an overall approach to migration on a framework of control versus establishing a migration management framework in which both economic and labour market, as well as human rights, are fundamental considerations.

24. Focusing the discussion in terms of control, law enforcement and restrictionist perceptions of States’ interests in these arenas appears to lead to policies which may undermine the interests of the very States promoting such an approach. The very recent U.S. national intelligence assessment of international migration is explicit in this regard. One of its *key judgements* is that “Restrictive migration policies, by limiting economic growth in Europe and Japan, may undermine efforts to overcome the imbalances among the advanced economies.”³

25. It appears that a focus on control approaches to international migration inevitably subordinate both fundamental humanitarian and human rights considerations and economic and developmental concerns to a secondary and consequential role, rather than addressing the constellation of relevant considerations in a framework of management of migration.

26. Migration, regular and irregular, has, does and will continue to exist as inexorably as economic forces at work in a globalized economy. The international community --sometimes

³ (US) National Foreign Intelligence Board: National Intelligence Estimate: Growing Global Migration and Its Implications for the United States. March 2001. (“under the authority of the Director of Central Intelligence”) Unclassified version.

reluctantly-- acknowledges the need to manage and regulate movements of capital, goods, technology, services, information, etc., whether through formal means or “market mechanisms.”

27. Certain controls may well be a part of (im)migration regimes, but cannot be primary determinants. To be effective and viable over time, ILO experience shows that migration policies must be built the other way around, based on long term economic and social development considerations in context of respect for international humanitarian and human rights norms. Control measures revert then to serve as one of the management mechanisms to implement and achieve longer-term goals.

VII. POLICY ISSUES FOR FURTHER WORK

28. The factors and discussion above are intended first and foremost to situate the discussion of the asylum-migration nexus in its broad and complex context. A number of these observations are preliminary explorations in areas where research has simply not been done but where there are clearly issues which need to be understood and appropriately addressed by policy makers, especially in governments and international organizations.

29. Further research and data is clearly needed to better define policy options. Methodologies and criteria for obtaining statistical information may need to be revised, particular if further perspective on causes and motivations for migration is to be obtained.

30. ILO experience in the context of considerations noted above suggests several areas of policy formulation where both refugee and labour migration factors must be taken into account. However, much work remains to be done; clear prescriptions to resolve these issues remain elusive. It is evident that this work must be done in an inter-disciplinary and inter-agency context in order to take into account the complexities of both conditions and eventual responses.

31. A major aspect is consideration of regular immigration/migrant labour admissions systems in every country to take into account changes in labour market needs, demographic trends and labour market characteristics in developed and developing countries, as well as to ensure options for regular migration/ immigration other than by asylum regimes.

32. Incorporating migration and refugee policy concerns in development, aid and investment policy appears to be an essential component in addressing migration and refugee pressures. This is essential to address situations where the lack of human security and decent work clearly drive migration, as well as contributing to discontent and instability that fuel repression, civil conflict and violations of human rights.

33. Implementing applicable human rights norms is a *sine qua non* of a comprehensive migration and refugee policy framework. Ratification by States of relevant ILO and international standards, notably ILO Conventions 97 and 143 and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families would contribute to protection of human and labour rights of refugees and asylees as well.

35. Regularization of long-term irregular migrants may be an important option to provide protection for persons in refugee-like situations present in many countries. It would also contribute to controlling abuse of undocumented migrants and refugees in underground economies.

36. ILO research reinforces the value of explicit legislation, measures and structures to combat discrimination against non-nationals, which would protect refugees and other migrants alike.

37. Addressing trafficking may be more effective in the context of implementation of measures noted above, particularly both provision of transparent regular migration channels and provision of protection of victims of trafficking. A number of analysts assert that restrictive migration control measures --in the face of traditional migratory movements, growing push and pull factors, and absence of accessible channels for regular migration-- are themselves a major factor in the rise of trafficking and smuggling of migrants.

38. Activity of the International Labour Office (ILO) on migration includes provision of assistance and technical cooperation to governments in elaboration of labour migration policy, legislation, and administration; promotion and monitoring of its Convention standards on migrant workers; and programs to extend protection of rights and dignity to especially vulnerable groups of migrants, such as domestic workers and victims of trafficking.

39. One activity of particular relevance to refugees as well as migrants is a project to combat discrimination against foreign workers and to identify effective remedies to this discrimination. Indeed, many identified examples of local and national anti discrimination and pro-equality practices by governments, employers and trade unions explicitly address refugees as well as migrant workers.

40. In the area of combating trafficking in persons and protecting victims of traffickers, substantial dialogue and cooperation has already been developed between ILO and UNHCR, and with IOM and the Office of the High Commissioner for Human Rights. These four agencies established some months ago an IGO Contact Group on Trafficking which has developed common perspective, improved coordination and facilitated joint work, both at headquarters and field levels around the world.

41. The discussion above suggests several areas where ILO would welcome further dialogue and cooperation with UNHCR. These include: shared research, formulation of policy options, promotion of adoption of international standards, cooperation in international training initiatives, and exploration of practical project activities in the field and in Geneva.

28 June 2001
ILO
International Migration Branch