

ILO Century Project



International
Labour
Organization

A brief account of the ILO and policies on international migration

Roger Böhning



Disclaimer: This is a draft paper, which is made available on the Century Project website for information and comments. It is not for citation without the permission of the author(s).

The responsibility for opinions expressed in the paper remains with its author(s), and its inclusion on the website does not constitute an endorsement of its content by the ILO or the ILS.



International
Institute for
Labour Studies

Table of Contents¹

1. Introduction: Some clarifications	2
2. From World War I to World War II: Institution building in uncertain times	4
2.1 Setting: Governments take control of European migrations	4
2.2 The origin of the Organisation's migration mandate	5
2.3 A stuttering start	9
3. From World War II to the beginning of the 1970s: New values, new initiatives but a great setback.....	13
3.1 Setting: Economic migration diversifies	13
3.2 The world's first basic migration standards	14
3.3 A major technical cooperation programme on migration – stopped by the Cold War	16
4. From the beginning of the 1970s to the early 1990s: New migrations, additional standards, painful interdependencies.....	19
4.1 Setting: New players, old problems	19
4.2 A Convention against illegality and for equality	20
4.3 The WEP, technical cooperation and informal meetings	22
4.4 Elaboration of the UN Convention.....	24
4.5 Many expulsions, some compensation.....	24
5. From the early 1990s to the present time: Living with globalisation.....	27
5.1 Setting: More migrants, more countries, more complexities	27
5.2 The demonstration that discrimination is widespread.....	29
5.3 Expert meetings, no new or revised standards and differing multilateral frameworks....	30
6. Where does the future lie?.....	33
7. References	35

¹W.R.Böhning's major office positions: 1973-August 1981, Manager, International Migration for Employment, World Employment Programme (various designations), Geneva. February 1982-August 1997, Chief, International Migration for Employment Branch (various designations), Geneva. September 1997-August 2000, Director, South-East Asia and the Pacific Multidisciplinary Advisory Team, Manila. September 2000-December 2003, Director, Programme for the Promotion of the Declaration, Geneva.

Acknowledgements: the author is grateful to his former colleagues Manolo Abella, Ibrahim Awad, Christiane Kuptsch, Nana Oishi, Gerry Rodgers, Jean Michel Servais, Lee Swepston, Patrick Taran and Piyasiri Wickramasekara for their comments. The responsibility for the views expressed remains his own.

1. Introduction: Some clarifications

This paper provides a succinct account of how international migration policy questions have impacted at critical junctures since World War I on the International Labour Organisation and how they have been handled by the International Labour Office. The former is hereafter abbreviated as Organisation, the latter as Office.² The English initials of both, ILO, are identical and liable to misunderstanding. One must, therefore, be aware that the most important political decisions are taken by the Organisation on the occasion of the annual International Labour Conference (Conference) or of regional meetings by the assembled governments, employers and workers representatives, and that the Office is the Organisation's secretariat, also referred to hereunder as "staff". A third organ is the Governing Body (GB) which, like the Organisation, is composed of governments, employers and workers. Charged by the Constitution with the control of the Office, it was initially conceived as an executive organ but has in the course of time assumed a more political role and is in many respects more central to developments than the Conference. I use the initials ILO only when the distinctions among the three organs are immaterial. In the references, however, ILO invariably refers to the Office.

According to the Preamble of its 1919 Constitution, the Organisation is concerned, *inter alia*, with "workers when employed in countries other than their own". Some governments pursuing settlement policies have sometimes sought to restrict the ILO's activities to economically motivated migrants perceived as temporarily working outside the country whose passport they hold. At other times, a non-economic category, refugees, has been the object of activities, even of standard setting and, in later years, of technical cooperation. The Organisation's basic and enduring Migration for Employment Convention of 1949 (No. 97) covers non-nationals who move under temporary migration auspices as well as non-nationals admitted as permanent immigrants, and certain provisions of the accompanying Recommendation (No. 86) additionally cover refugees and displaced persons.³ This paper does not use the terms economic migration or migrant workers only with respect to cross-border movements that either the country of origin or the country of employment wants to be temporary in duration and circulatory or return orientated in nature. Unless it is clear from the context, my terminology is meant to cover all economically active persons who intend to move or have moved (or, in the case of return migrants, who had moved) to a country of which they are not nationals, which I indistinctly refer to as immigration or migrant-receiving countries.

² The capital "O" will be used for both, as distinguished from other organisations or offices. Likewise, the capital letters "C" and "R" will be used for the Constitution, Conferences, Committees, Conventions, Recommendations, Resolutions and Representations of the Organisation and Governing Body, and the capital letter "S" for the Sessions of the International Labour Conference and Governing Body, as distinguished from other organisations' constitutions, conferences, etc., unless they are part of a title.

³ Both standards exclude frontier workers, the short-term entry of members of the liberal professions and artists, and seamen. Part II of the 1975 Migrant Workers (Supplementary Provisions) Convention (No. 143) further excludes frontier workers, persons coming specifically for purposes of training or education, and employees of organisations or undertakings within the territory of a country who have been admitted temporarily to that country at the request of their employer to carry out specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments. But the specifications in these standards have not excluded those categories from other standards, such as in the field of social security, or from studies, meetings or technical cooperation. For seaman, however, there have always been special arrangements.

Although the paper is broad in coverage, I can treat one particular subject matter merely in passing and another not at all. The social security rights of migrant workers, an essential component of the protection that international law seeks to extend to them, are only briefly mentioned without details regarding the contents of law or the techniques chosen to operate various insurance schemes. Not covered at all are the movements of “native” or “indigenous” labourers during colonial times even though the notion of migrant worker can be applied to them. They were mostly pressed to work for white industrialists, planters, households or mining magnates under generally abominable conditions. In an attempt to protect them, the Organisation adopted several standards of which whole parts or certain provisions applied to cross-border movements, sometimes under the heading of migrant workers.⁴ Their stipulations may be judged to be progressive for their times; and some included provisions that were incorporated without much change in Convention No. 97 and Recommendation No. 86. However, the questions to which those standards were addressed warrant a distinct treatment.

A variety of analytical constructs would seem to be available to elucidate the subject of international economic migration, buttressed as it is supposed to be by welfare considerations. The first that come to mind are theories of economic development or employment in vogue during certain periods. However, economists tend to overlook the fact that international migration, since the birth of the ILO, is primarily determined by political decisions of immigration countries that are driven by intermingling motives, such as foreign relations preferences, demographic considerations, trade union concerns, possible grass-roots hostility as well as employers’ desires to fill vacant posts at conditions that are attractive to them. The many factors that play a role can be accommodated by the prevailing push and pull paradigm, which has been supplemented by concepts such as intermediaries and the inertia of migration. But push and pull factors, intermediaries and inertia are a-historic concepts and afford no value added for the investigation at hand. If one turns to political science’s international relations theories, one must realize that the ILO has had to live with very different political regimes – democracies of various hues, communist autarchies, fascist or authoritarian or dictatorial and military regimes at the level of highly industrialized, developing or backward countries and which were variously cast in the role of receiver or sender of migrants – that have seldom seen eye-to-eye in this field.⁵ This diversity, which amounts to heterogeneity at times of co-existence, restricts the explanatory power of regime-type approaches; and there are often more migration policy differences among democratic regimes than between them and their non-democratic counterparts. Political science’s “realist” school, which cuts across regimes, is unable to accommodate the other interests and motivations that are so prevalent in this area. As regards concepts of welfare states, they wag the international migration dog by a tail tied to receiving countries, which is a particularly limited perspective to take. If one changes tack and focuses on the institutions – the Organisation, the GB and the Office – where the multitude of positions are meant to be brought out into the open with a view to finding a mutually acceptable solution, Ernst B. Haas’s seminal work (1964) that is based on the theory of growing integration through functionalist action might inspire generations of researchers. But not only was his analysis regarding the ILO as a whole quite pessimistic, I know from personal experience that functionalist analysis applied to migrant workers questions would have to proceed on a very thin empirical basis and would be rather fruitless – it is not worth going down that road.

⁴ Including the 1936 Recruiting of Indigenous Workers Convention (Articles 2(a), 18(2) and 24), the 1939 Contracts of Employment (Indigenous Workers) Convention (Articles 18 and 19) and the 1947 Social Policy (Non-Metropolitan Territories) Convention (Part IV).

⁵ As exemplified by, for example, the voting pattern on Convention No. 143, see section 4.2.

This paper limits itself to a description of policies, interests, events, issues, successes and failures in the historical contexts in which they occurred. It gives fair space to the first decades that are beginning to get forgotten, yet they are very revealing and instructive for researchers interested in the workings of international organisations. The periodisation imposed on the raw material is a matter of convenience. While the cut-off points of sections 2 and 3 may be intuitively acceptable, the periods since World War II are less clear-cut in their demarcations as far as international migration is concerned, and the subjects elucidated during specified periods are not always confined to them. An increasingly complex world is not easy to pigeonhole.

2. From World War I to World War II: Institution building in uncertain times

2.1 Setting: Governments take control of European migrations

During the last few decades before World War I, Europeans moved on a massive scale and practically unhindered to the Americas and Oceania, and in smaller numbers to African colonies, essentially through private channels. Germany had begun to import workers to satisfy seasonal needs in agriculture, but France was at that time Europe's major immigration country, engaging Italians since 1904 under the auspices of the first bilateral migration agreement of which Arthur Fontaine – an important actor at Versailles and later chairman of the GB – was the chief architect. This treaty marks the first attempt at governmental regulation of the employment of foreign workers. In fact, it was less of a recruitment agreement than welfare orientated and had the double purpose of placating French workers who feared the introduction of cheap foreign labour and of giving the French government some leverage to induce the adoption of social insurance schemes by Italy – a manifestation of the widespread desire to prevent unfair competition among the major traders of industrial goods during the pre-World War I phase of globalisation, which found its way into the Preamble of the Organisation's Constitution (see footnote 12 below).

The long drawn-out war not only brought spontaneous migration movements to a halt but it also forced governments to take control of all resources, above all of labour. In 1916 in France, when Albert Thomas – three years later the first Director-General of the Office – headed the ministry of munitions, the government concluded a further labour agreement with Italy, sought to obtain workers from Portugal and started to recruit the first of some 220,000 non-Europeans from its African and Asian colonies. After World War I, government controls, passport or identity cards became ubiquitous. In effect, the need for control was written into almost every government's and all trade unions' statements during the war, on the part of the allied powers as much as on the part of Germany. Already before the war, Italy had been the first emigration country to set up a body aimed chiefly at the protection of her nationals' physical health during transport and their cultural welfare abroad, the *Commissariato generale dell'emigrazione*, attached to the Ministry of Foreign Affairs. But in 1927 Mussolini decreed – for reasons of national pride and because he needed manpower for his armies and colonies – that Italy no longer was an emigration country. Three years earlier, the US had halved its annual immigration intake and established a national-origin quota system to favour traditional countries of origin rather than Eastern Europe or other regions of the world. Almost everywhere governments became more possessive of their citizens. Emigration countries, where they had previously not “shovelled out paupers” but had looked at least benignly at the huddled masses leaving of their own volition, now began to view them as a resource that might be useful for the nation. Immigration countries became more selective and wanted to direct newcomers to where labour was needed. But the Great Depression

quickly put an end to large-scale flows to industrialised countries; it caused some ugly ethnic incidents between French and Italian or Polish workers and led to the return of many migrants. Movements continued, however, on a large scale to the vast lands of Latin America that governments were eager to put to productive use. Later on, Europe witnessed sizeable flows of political refugees first from Nazi Germany then from the Spanish civil war before Hitler forced millions of conquered foreigners to work for his war machinery, and World War II itself entailed the largest movements of people the continent had ever seen.

2.2 The origin of the Organisation's migration mandate

A summary of the key strands that were woven into the Versailles Peace Treaty is instructive with regard to the politics that are played out in international settings on migration issues. It can be based here on the information published by two participants in the Versailles negotiations: Edward Phelan, then a British civil servant and much later the Office's Director-General, and Prof. James Shotwell, a member of the US delegation.⁶ It suffices to focus on the victorious powers' governments and trade unions, although it should be noted in passing that the German government and trade unions, as well as the International Federation of Trade Unions in which the *Deutsche Gewerkschafts Bund* played a leading role, accorded considerable importance to questions of international migration. Private employers were practically absent from these discussions, except for a lone banker who participated actively in the US delegation.

One strand was clamour on the part of trade unions in the major industrialised countries. Migration was about as high on their list of priorities as questions of child labour and the protection of women workers. It was in the interest of union representatives in receiving countries to prevent employers' greed from feeding on the desperation of foreigners willing to work on just about any terms; and it was in the interest of union representatives in sending countries to profess in the same ideal for brotherly reasons directed at both their own nationals and their union counterparts abroad. Leaving aside the many pre-war instances of this clamour, the conference of the reformist Allied Trade Unions, held in July 1916 in the English town of Leeds concurrently with the annual meeting of the British General Federation of Trade Unions, is widely acknowledged to have influenced the Versailles negotiations (for an appreciation of the impact of the Leeds conference, see e.g. Riegelman, 1943, pp. 64f). Leeds was remarkable in two respects: (i) the "Historical survey of the efforts to coordinate international labour legislation", an input document prepared by the French *Confédération générale du travail* and presented by its Secretary, Léon Jouhaux, the later leader of the trade union group in the GB, which was replete with statements on international migration (Shotwell, 1934, Vol. II. doc. 3); and (ii) the output document that covered foreign workers prominently (*ibid.*, doc. 4). More radical union organisations, the International Trade Union Conference and International Socialist Conference, met in Switzerland's capital in October 1917 and early February 1919 and adopted a range of demands relating to emigration, immigration, temporary contract workers and equality of rights, including migrants' right to participate in trade unions and to strike (*ibid.*, doc. 39).

A further strand was the initial reticence of the US and British governments to bring up migration questions in the context of the future ILO (see Shotwell, 1934, Vol. II, doc. 16 of September 1918 regarding the US together with doc. 37 of February 1919, and doc. 17 of November 1918 regarding Great Britain). When they prepared their positions in early March 1919 in the context

⁶ Many of the key documents in Shotwell, 1934, can also be found in Vol. I of the *Official Bulletin*, 1923. As the latter source appears less easily accessible than the former, I will identify documents through Shotwell's book.

of what became known as the Labour Charter, their drafts were once again devoid of references to migration matters (*ibid.*, Vol. II, doc. 43a and b; see below for the Labour Charter). The explanation for the American attitude must be that the government did not want any interference in its immigration affairs by outside powers or an international organisation. As regards Great Britain, although Edward Phelan, the unsurpassed chronicler of events surrounding the ILO, stated in his personal recollections that the London Minister of Labour's paper for the peace negotiations had foreseen standards aimed at the "protection of immigrant workers" (Phelan, n.d., Vol. II), I found no published evidence to that effect and am reinforced in my scepticism by the fact that the first complete *internal* draft of the British plan for the labour component of the Peace Treaty dated 26 January 1919 contained no reference to migrant workers whatsoever (Shotwell, 1934, Vol. I, pp. 372ff, column 1). The explanation for the British stance is that the country was a major supplier of settlers who preferred to move to the overseas Dominions of Canada, Oceania and South Africa or to colonies; the government abhorred interference by outsiders in its imperial migration system and frequently consulted the Dominions which were represented in Paris.

A third strand comprises French politicians and trade unionists, notably the *Confédération générale du travail*, for whom the demand for equality of wages and working conditions between national and foreign workers was a basic tenet (see Shotwell, 1934, Vol. II, doc. 3, 19-22, 25, 28). Experiencing labour shortages, France had recently become the first country to conclude an international migration agreement with Italy (see section 2.1). Despite victory and amputation of large slices of German territory, the French government was haunted by the spectre of a "demographic deficit" vis-à-vis that country and a lack of brawns for the reconstruction of its own devastated departments and economy. French interests, as formulated in December 1918 (*ibid.*, Vol. II, doc. 22), contrasted strongly with those across the Channel. It must have come as something of a shock to the British when Paris submitted to the body charged with the drafting of the labour component of the Versailles Treaty, the Labour Commission,⁷ a number of proposals on 4 February 1919 that foresaw, among other things, the signature of "conventions providing for equality of wages and working conditions...between foreign and native workers" and the examination of "freedom of migration of workers who of their own free will desire to proceed abroad and the regulation of collective migration" (*ibid.*, doc. 35, p. 324). And alarm bells must have rung in the British delegation when, on the same day, Italy propounded "freedom of migration regulated by agreements between the governments and the trade unions of the countries directly concerned" (*ibid.*, doc. 36, p. 327).

But the British played their cards well. They were the first to table a full and well-structured draft of the future ILO on 2 February 1919. Adorned by an elegantly formulated Preamble, its operative provisions were restricted to the necessary "machinery and procedures" (text in Shotwell, 1934, Vol. I, pp. 372ff, column 2). The Labour Commission willingly took it as the basis for discussion and decisions. The French suggestions arrived two days later; they included those quoted in the preceding paragraph; were of various natures and origins, even repetitive – fit for a general discussion but unsatisfactory as a drafting basis. They were shunted off to a sub-commission together with extensive Italian proposals and other countries' programmatic ideas. The British had actually stolen a march on everyone. Not only were their proposals well-thought out, the almost unnoticed draft Preamble contained the words "protection of the interests of workers when employed in countries other than their own". This was the first – and last – time

⁷ Edward Phelan was one of the recorders of the Labour Commission. He has summarized its work in Shotwell's first volume (Phelan, 1934b). The actual minutes appear in Shotwell's second volume, pp. 149-322.

the British risked drafting something on migration. The imprecise phrase was never subjected to detailed examination by the Labour Commission,⁸ and it thus became part of the Treaty of Versailles and the Organisation's Constitution.

From the documents at hands it is not clear why the British added this wording at the last minute. One would not go far wrong in attributing it to the informal consultations that took place among delegations⁹ and the British perception that vague words of this nature could blunt the more far-reaching French and Italian proposals. One might also speculate that consultations with Dominions, notably those of Australia and Canada, led to formulations that could be interpreted by them, as well as by the mother country, as not tying them down in the event that future international legislation would regulate international migration matters – British workers, it could be argued, were moving among countries that were their own.¹⁰ At any rate, it was all over bar the shouting.

Shouting – of the diplomatic kind – occurred in the context of the Labour Charter. Several governments were acutely aware that the workers who had borne the brunt of the war and who had seen Lenin seemingly handing them power in Russia, wanted Versailles to yield some tangible recompense, such as an eight-hour workday and fulfilment of the long-standing demand that foreigners not be a cheap alternative to nationals. Italy's detailed proposals aroused much controversy, particularly those concerning "freedom of migration" and the right of emigration countries to "send special officials to assist in any way and to protect their own emigrant workpeople" (Shotwell, 1934, Vol. II, doc. 43c).¹¹ When the amalgamated but somewhat emasculated ideas were re-submitted to the full Labour Commission on 19 March 1919 – some 10 days after the British "machinery and procedures" had been approved on second reading – time was beginning to get short. The British delegation began stonewalling and called the re-submission "something altogether inconsistent" with what had already been endorsed (see the amalgamated 19 points in Shotwell, 1934, Vol. II, pp. 296ff, the quote is on p. 300). The main reason for their resistance, according to an inside observer (Phelan, 1934c, pp. 199f), was opposition by the Australian and Canadian Dominions to the clause postulating equality of status and treatment among national and foreign workers. The US later joined this opposition (*ibid.*, p. 212). New consultations were called, more flesh was shaved off the various ideas, but when the Prime Ministers, Presidents, etc., met on 4 April 1919 and the British presented the draft of the ILO and of the Labour Charter, they introduced them as something distinct and declared that the latter had "still to be dealt with" (Shotwell, 1934, Vol. II, doc. 50, the quote is on p. 406). The ILO was approved for inclusion in the Peace Treaty as the text stood. But the Labour Charter

⁸ The French managed to have a muscular-sounding translation accepted: "La défense des intérêts des travailleurs occupés à l'étranger". Almost in passing, Arthur Fontaine requested on 11 March 1919 to add "recruitment de la main-d'oeuvre" to the Preamble, repeated by him the next day, whereupon the minutes of the proceedings state that this amendment was adopted (Shotwell, 1934, Vol. II, pp. 220 and 225). Curiously, there is no trace of these words in the actual Preamble.

⁹ As a result of which Prof. Shotwell told his delegation on 21 January 1919 that the "need for international agreements with reference to the labor of aliens has been keenly felt in Europe" and recommended that the US proposals include the "application of domestic protective labor legislation to resident and migratory aliens" (Shotwell, 1934, Vol. II, doc. 29).

¹⁰ This meaning was officially confirmed in an exchange of letters between the British government and Albert Thomas as early as September 1920. See *Official Bulletin*, No. 13, pp. 4-7.

¹¹ A good 60 years later this idea became part of the Office-driven Asian Regional Programme on Labour Migration that was designed to benefit migrant-sending countries such as Pakistan and Thailand. Their Labour Attachés were trained to help workers in Arab migrant-receiving countries, Hong Kong (then still a British colony) and Singapore.

underwent a wholesale slaughter that left it with nine points, including the following language that the British Dominions and the US found acceptable and which lends itself to infinite interpretations: “The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein”. Furthermore, the Labour Charter became a separate section of the Peace Treaty rather than an integral part of the new Organisation’s Constitution.

The French government, whose hopes had gone as far as endowing the new permanent Organisation with a recruitment mandate, was left without anything to show for; likewise the Italians, who lost all their proposals regarding migration. The British defended their baby; they wanted it to start walking and see how it would grow up; but they did not want it strapped down by clauses which they believed were inappropriate for a permanent Peace Treaty given that values and practices change as societies develop.¹²

Apart from the open-ended notion of “protection”, the British wording of the “interests of workers” in countries “other than their own” is enigmatic. The British studiously avoided indicating what “interests” they had in mind, just as they avoided using terms such as “immigration”, “migrant workers” or “foreign workers”. And they assigned the Organisation’s mandate to the Preamble, that is, a part of the Constitution which is merely indicative as to the philosophy underlying the principles and purposes of the institution.

But revolutionary these words were! This was the first time in history that a global organisation was endowed with functions – studying, meeting, setting norms, assisting countries, and even ensuring a level-playing field – in an area that States had always jealously defended as a core part of their sovereignty. In Versailles, as Edward Phelan (1934a, p. 113) said, “revolutionary ideas seemed less startling, and not wholly incapable of realization”.

Revolutionary ideas, of course, tend to take on a dynamic of their own. While the ILO has always been closely attached to the notion of “protection of the interests of workers when employed in countries other than their own”, the Organisation, the GB and the Office have, as called for by new circumstances, extended their activities to, for example, recruitment, the dependents of migrants and economic alternatives to migration, i.e. questions concerning in the first instance countries of origin. In effect, reacting to the first general Conference of the Organisation in Washington in October-November 1919, the GB promptly set up an International *Emigration Commission*.

¹² The British placed great hopes in the new international institution and successfully anchored in the Preamble what would today be called a social clause, which reflected a philosophy and fear shared by the industrially advanced countries during that period of globalisation: “Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries...” To underpin the Preamble with concrete procedures, the British put an inter-State complaints procedure into the toolkit of the new intergovernmental organisation and envisaged commissions of inquiry and sanctions “against the commerce of that (defaulting) State” (see Shotwell, Vol. I, p. 408, both columns). These provisions were introduced with the specific object of preventing “unfair advantage in industrial competition” (see Shotwell, Vol. II, doc. 25, the quote is on p. 124).

Brian Langille has recently analysed these issues in the light of contemporary globalisation, see Langille 2003 and 2005.

2.3 A stuttering start

The main fault lines in Versailles set apart continental European emigration countries on the one hand and “overseas” immigration countries on the other. The British Dominions defended their policies with racial overtones – these were the times when Gobineau’s *Essay on the Inequality of the Human Races* still poisoned many European heads and Kipling’s *White Man’s Burden* was published only 20 years ago. The basic negotiation pattern has been repeated over and over again: Immigration countries dominate outcomes at the international level; the stronger delegations among them, those of the British Empire and the US in this case, secure their interests more easily than the weaker, such as France. As emigration countries stand cap in hand before the countries they want to admit their surplus population, they are in the weakest position of all, as demonstrated by Italy’s vain attempts at influencing the Labour Charter.

The Washington Conference took place in an atmosphere of much pent-up pressure. Negotiations at the Conference were – and could be – more accommodating than at Versailles. They gave rise to a Convention that partly covered migrant workers as well as to two Recommendations and two Resolutions that concerned them exclusively. The Washington Conference could be more accommodating because, for governments, Conventions are a safe option that require approval by national authorities before they can have any legislative or practical effects; because Recommendations are exactly what that term implies, no more; and because Resolutions exert effects on the Office rather than on countries, with the Office being in any case subject to the control of the GB.

The Convention concerning unemployment (No. 2) adopted in Washington, which applied to all workers rather than only to migrant workers, envisaged a special arrangement for the latter. It stipulated that member States “shall, upon terms being agreed between the Members concerned, make arrangements whereby workers belonging to one Member and working in the territory of another shall be admitted to the same rates of benefit (of established systems of insurance against unemployment) ... as those which obtain for the workers belonging to the latter” (Article 3).¹³ As for the Resolutions adopted in 1919, the Italian and French governments pushed for the idea of an International Emigration Commission “to consider and report what measures can be adopted to regulate the migration of workers out of their own States and to protect the interests of

¹³ The two Washington Recommendations have recently been withdrawn by the Organisation as no longer up to date. The Recommendation on Unemployment had nothing to do with unemployment but, in Paragraph 1, aimed at widespread abuses by private intermediaries and, in Paragraph 2, made the desirability of migration agreements between countries, and of consultations with organisations of employers and workers, subject to the – well-nigh unrealisable – condition that the consultations take place “in each country in the industries concerned.” The Reciprocity of Treatment Recommendation was drafted as a Convention by Argentina, which declared that it was aware of US susceptibilities, and hence converted the Convention to a Recommendation. This instrument took a step forward in respect of foreign workers’ freedom of association rights; it had a much broader coverage than the Convention concerning Unemployment; but it took a step backward in respect of unemployment – or any other – benefits by introducing strict reciprocity. These curiosities of 1919 find their explanation to a large extent in the US system of federalism and the treaty-making powers of Congress, which had threatened to blow up the negotiations in Versailles. Those threats were eventually circumvented by an invention not originally foreseen in the British proposals concerning international labour legislation – Recommendations. At that time it was thought that the US government could legitimately submit only Recommendations to Congress with a view to having Congress consider enacting their provisions by federal legislation or otherwise. Both Recommendation adopted in 1919 clearly reflected US interests of the time and would *de facto* absolve the US from any obligations. Later on, Recommendations lost their US orientation and either began to embody standards that were not ripe for a Convention or to supplement them with greater detail.

wage earners residing in States other than their own.”¹⁴ The GB concurred and took care to balance emigration and immigration countries represented in this Commission. It also invited a representative of US workers (though none took up the offer) and of non-governmental organisations that were beginning to play a role in this field. It was able to open the doors to outsiders because the International Emigration Commission floated somewhere between a technical meeting of experts and an international conference of political representatives. It was not a Committee of the GB but reported to it – uncertainties of the first years of institution building. The Commission’s first chairman was a former Secretary of State for Home Affairs in the British government, who was followed by a former Speaker of the House of Commons – thus, the Italian vice-chairman was under firm control! Although the Commission took until August 1921 to get going, it eventually went into overdrive and produced batches of Resolutions.¹⁵ One of these gave rise to the 1922 Migration Statistics Recommendation – a result the Office judged “very moderate, possibly even mediocre” for two years of labour.¹⁶ Another of the Commission’s Resolutions suggested turning it into a permanent committee of the GB, which gave rise to an acrimonious debate and a refusal by a vote of nine for and nine against. When in early 1923 the GB considered the suggestion by the International Emigration Commission to put the subject of equality of treatment on the agenda of the Conference, the immigration/emigration fault lines and certain racial overtones manifested themselves once more (and not for the last time). The 1925 Conference nevertheless adopted both a Convention and a Recommendation concerning Equality of Treatment for National and Foreign Workers as regards Workmen’s Compensation for Accidents. The Convention innovatively associated international reciprocity with its ratification: “Each member of the International Labour Organisation which ratifies this Convention undertakes to grant to the nationals of any Member which shall have ratified the Convention ... the same treatment ... as it grants to its own nationals” (Article 1(1)).¹⁷

The second of the relevant Washington Resolutions called for a special technical section on migrant workers to be created in the Office, primarily to underpin the work of the International Emigration Commission. It was set up in no time and started to collect and distribute information. For example, the *International Labour Review* included since January 1922 “Notes on Migration” on a monthly basis, which were later issued as a separate publication. Learned articles also began to appear, such as “The rights of emigration and immigration” by P. Fauchille (1924), duly introduced as being controversial.

The Office’s cautious diligence coupled with the GB’s arms-length dealing of the International Emigration Commission must have disappointed emigration countries, which viewed international organisations as potential allies in this field, most of all Italy because it was represented in the GB at the time by the highest official of the *Commisariato generale dell’emigrazione*. Italy decided to convene an intergovernmental conference on emigration in Rome in early 1924 with agenda items that included subjects to be dealt with by future international conventions; and it invited the Office to provide documentation and to attend. This caused some soul-searching in the GB (GB, October 1923, 20th Session, pp. 23ff/534ff and

¹⁴ Leitner (n.d., pp. 150ff) dug out the French input paper for the Washington Conference in which the government went as far as envisaging international labour recruitment functions by the Office.

¹⁵ See the report on its activities in the *ILR*, Vol. IV, No. 3 (December 1921).

¹⁶ *ILR*, Vol. VI, No. 6 (December 1922), p. 883. The *ILR* repeatedly acted as a quasi official bulletin of the Office during the early years.

¹⁷ 121 countries ratified Convention No. 19 by the end of 2007. The British and South African governments actually ratified it in 1926, Australia did so in 1959, but neither Canada nor New Zealand has ratified it to this day.

78f/589f). The Office's mere observer role in Rome gave it a jolt. The Director-General's first reaction in the GB was to remind its members that long before Rome there had been proposals to institute a permanent emigration body (GB, June 1924, 23rd Session, p. 16/244). Four months later he submitted a lengthy report (GB, October 1924, 24th Session, Appendix IV) which stated diplomatically that "if the Office had been able to constitute a permanent emigration committee, it is possible that the countries of emigration might not have felt called upon to summon a special conference"; and he outlined a Permanent Emigration Committee to be composed of one member each from the GB's tripartite membership (*ibid.*, pp. 100f/395f). The British government and members from Australia, Canada and South Africa volubly reiterated their traditional hostility, but they were in a minority now. The officers of the GB were designated as the new Committee's sole members; and suddenly a scramble took place for having one's nationals, including sitting members of the GB, designated as experts to serve on the Committee – 99 in total!

The impetus of the Rome conference and the expertise mustered by the GB's Permanent Emigration Committee combined to prepare a Convention that was adopted by the Organisation in 1926, the Inspection of Emigrants Convention (now shelved), which more or less fulfilled Italy's long-standing wish to place a representative on board ship to accompany its nationals leaving for another country.

Italy saw itself in the vanguard of migrant-sending countries. In Versailles it had failed in its direct attempt to have the future ILO take account of its interests because of resistance by the delegations of the US and the British Empire. In Washington it tried the indirect way through Resolutions – only to face British resistance in the GB when it came to give them concrete effect. It then took the roundabout way of putting pressure on the GB and the Office by holding its own conference in Rome – and that external event moved both the Office and the GB.

The mid-1920s was a comparatively optimistic period for Europeans and Americans, and even in the migration field the ILO was beginning to move along purposefully. Relevant Conventions had been adopted; the Office collected and distributed much useful information; the institutional machinery was in place in the form of a permanent GB Committee; and the French trio of Albert Thomas, Arthur Fontaine and Léon Jouhaux tended from time to time to lean slightly in favour of a more active involvement in migration questions (see e.g. GB, 1927, 36th and 37th Session). The League of Nations transferred its refugee operations to the Office in 1925 without much ado. A World Emigration Congress by the International Federation of Trade Unions and the Labour and Socialist International in London in June 1926 sought to push the Office more broadly and deeply into this field.

Unfortunately, confidence in the future was soon sapped by continued challenges to the ILO's migration competence and by fascist movements that were rearing their ugly head, in the case of Mussolini by stopping Italian emigration and in the case of Hitler by openly seeking to scuttle the Versailles Treaty on which the ILO was founded.

Challenges to the migration competence had come from the 1926 London conference of trade unions which, although fundamentally seeking to strengthen the Organisation, suggested that a separate international migration body be established *if the Office proved unable to move forward*

(see also Jouhaux in, e.g., the March 1929 GB, 43rd Session, p. 41/205). Another challenge stemmed from the International Conference on Emigration and Immigration in Havana in March-April 1928, which was a successor meeting to Rome, though neither the convocation of this meeting nor the Office's involvement in it caused as much soul-searching as four years earlier; and Havana itself turned into a primarily Latin-American affair.¹⁸ The League of Nations also planned to hold an International Conference on the Treatment of Foreigners in late 1929 with the possibility of drafting an international convention.¹⁹

Albert Thomas felt it was time to express his worries that the “various bodies which dealt with migration questions were increasingly tending to co-operate more closely with the League organisations and to hand over responsibility for dealing with migration questions to those organisations” (GB, October 1928, 42nd Session, p. 71/549). In the spring of 1929 the Director-General took the offensive by proposing to upgrade the Permanent Migration Committee – it had in the meantime lost its “E” and subsequently lost its “Permanent” as well – to 12 members plus five outside experts and to have it meet soon (GB, March 1929, 43rd Session, Appendix VII). The former Permanent Emigration Committee had demonstratively but misleadingly been labelled “permanent” because it could not assemble unless the GB so instructed it; and it had met only once before Albert Thomas tried to inject some dynamism into it.

In the summer of 1929 the Conference underscored the topicality of international migration by adopting two Resolutions on that subject. The first concerned the recruitment of bodies of workers in one country with a view to their employment in another country, which was submitted by the Chinese government and was complemented by a Resolution on unemployment that touched on the same subject but went further in that it proposed that these questions be placed on the agenda of an early session of the Conference. The second specific Resolution concerned equality of treatment between national workers and coloured foreign workers, which was submitted by the Chinese workers' representative and which requested the “Governing Body ... to consider the desirability of placing on the Agenda of a very early Session of the Conference, and if possible in 1931, the question of equality of treatment between national workers and coloured foreign workers employed in the territories of States Members or in their possessions and colonies.”

Several Dominion voices in the GB sought to prevent the reconstituted Migration Committee from dealing with either of these Resolutions, and there were also some suggestions that something needed to be done about the Conference since it was producing too many Resolutions.²⁰ Upon a vote, the GB referred the Chinese government's Resolution, together with the relevant paragraph of the Resolution on unemployment, to its Migration Committee for suggestions. The Resolution raising the issue of equality with coloured workers caused even Albert Thomas some headache; and the GB decided without opposition to refer it to the Office to collect relevant information – an unceremonious burial (GB, October 1929, 46th Session, pp. 84f/486f, pp. 89ff/491ff and pp. 119ff/521ff).

¹⁸ See the undisguised relief of the former Chief of the Office's Migration Service, Varlez, 1928.

¹⁹ See the report in GB, April 1930, 48th Session, pp. 178ff/445ff, according to which the League would, *if needed*, seek the Office's opinion on questions concerning foreign workers.

²⁰ The Standing Orders Committee invented a filter just before World War II that consisted of the prior unanimous approval of any draft Resolution by the Officers of the GB, see GB, April 1939, 87th Session, pp. 10f.

Then the crash in Wall Street changed the economic and political parameters. International economic migration came to a halt. And so did the new Migration Committee of the GB, which met only once each in 1930, 1934 and 1936. In the latter case its convocation was due to the fact that the American States which were members of the Organisation held a regional Conference in January 1936 in Santiago de Chile²¹ where an Argentinean-inspired Resolution was adopted which requested (a) to have the Office carry out a study of the prospects and problems of settling European colonists in the region,²² (b) to convene a conference of experts for the purpose of examining how financial support could stimulate this kind of settlement migration,²³ and (c) to put this question on the agenda of the Conference. A number of Latin American countries had become unhappy with the restrictions on emigration by several central and eastern European governments and, of course, by the fascist governments of Germany and Italy; and they wanted to mobilise the ILO to get the movement of settlers going again. The Santiago Conference provided an important impetus for the adoption of the Migration for Employment Convention (No. 66) in 1939, less than three months before the outbreak of World War II.²⁴ It never entered into force because of lack of ratification but provided the backbone for the standards adopted in the wake of World War II.

3. From World War II to the beginning of the 1970s: New values, new initiatives but a great setback

3.1 Setting: Economic migration diversifies

Nazi barbarism and Japanese atrocities induced a new vision of mankind that was proclaimed by the Organisation's Declaration of Philadelphia in 1944 (before the United Nations took up the cudgels): "All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity." The ILO of Versailles was born into times that were backward-looking as far as racial questions are concerned. The revived ILO and the new UN were born into forward-looking times of the equal worth of every human being.

Economically, times were difficult, especially in Europe where the war had deposed millions of people outside their countries of birth – refugees, displaced persons, former forced workers, etc. During the first five years after the war about three million managed to enter traditional settlement countries, especially in Latin America, but immigration opportunities in Northern America and Oceania were limited because demobilised soldiers were given priority in filling jobs. Thus, a pool of destitute individuals and families built up, particularly in the various zones of defeated Germany, which had to accommodate an additional 12 million ethnic Germans from territories in which they were no longer welcome.

²¹ For the report on the Santiago Conference and the subsequent meeting of the Migration Committee, see GB, February 1937, 78th Session, Appendix X.

²² Quite a number of studies, some of which had been commissioned earlier, were summarised in the *ILR*.

²³ A Technical Conference of Experts on Migration for Settlement was held in February-March 1938 and reported upon to the GB in April 1938, 83rd Session, Appendix III. One of its proposals was to set up a Permanent Committee on Migration for Settlement, to which the GB agreed in June 1939.

²⁴ For an Office summary of the proceedings in the relevant Conference Committee and the discussion in the full Conference on this Convention and its two related Recommendations, see *ILR*, Vol. XL, No. 4 (October 1939), pp. 472ff.

Somewhat surprisingly, and thanks partly to the Truman doctrine and Marshall Plan, most western European economies began to experience sustained growth during the decade of the 1950s. Switzerland, with an economy unscathed by the war, had already begun to import foreign workers, initially Italians, on a sizeable scale to plug labour market gaps at the lower skill end in agriculture, construction, manufacturing, hotel and catering. Pressed by unions, the equal pay for equal work principle was accepted in principle and generally applied in practice. Another principle, embraced by politicians and officials, was the “rotation” principle – foreigners would come without their families, work and eventually return home for good endowed with new skills and hard currency savings. This idea fitted central European seasonal agriculture, construction and the tourism sectors better than year-round jobs in manufacturing where employers were reluctant to have to train newcomers year after year. France, West Germany and later also the Benelux countries and Sweden were afflicted by the same kind of labour shortages; and all but France and Sweden replicated the Swiss model for a decade or longer. Foreign workers were drawn from more and more countries – the Iberian Peninsula was tapped after Italy, then Yugoslavia, Turkey and the Maghreb countries. The West German and some other governments closely followed the stipulations of the 1949 Convention and Recommendation on migrant workers, setting up public recruitment offices under the auspices of bilateral agreements, medically examining candidates, etc. Other countries, particularly France, relied more on the drive of emigrants, on the private networks that began to operate and on the filtering by employers, which incurred much immigration outside the law and repeated *ex-post facto* regularisations of foreigners’ status. France was fairly liberal up to the first oil shock, convinced that assimilation would somehow occur naturally and boost population growth.

It is worth highlighting that, since the 1950s, politicians in the Nordic countries and the European Economic Community, today’s European Union, decided gradually to roll back the State’s entry controls for citizens of other member States. Freedom of workers to pick up work outside their own country started to become a reality again some 40 years after it had ended in that region.

Most European flows to traditional settlement destinations had by then dried up while new migrants from Asia, Latin America, Haiti, the Lebanon and elsewhere started to knock at Northern American and Australian doors. The US and Canada were half driven by economic forces, half pulled by the tenet of equality, to modify their discriminatory admission policies in 1965 and 1967, respectively, and Australia dropped its racially-based selection criteria in 1975.

One after-effect of World War II was the liberation of numerous populations from the colonial yoke. This turned some intra-colonial movements into international migration and eventually occasioned new cross-border movements, though these were noticed by researchers and international organisations much later (see section 4.1).

3.2 The world’s first basic migration standards

The post World War II Permanent Migration Committee, a technical advisory body to the GB composed only of government experts,²⁵ adopted a Resolution at its first meeting which

²⁵ Not to be confused with the pre-war Committee of similar designation, which seems to have disappeared from the GB’s view. The post-war Permanent Migration Committee derived from the Permanent Committee on Migration for Settlement mentioned in footnote 23. During the war, the GB decided to enlarge the latter’s scope so as to include all forms of migration and to change its name to Permanent Migration Committee (GB, April-May 1944, 92nd and 93rd Session). The new Committee held its first meeting in August 1946 (reported upon in GB, September 1946, 99th Session, Appendix IX, see also the *ILR*, Vol. LV, Nos. 1-2 (January-February 1947), pp. 98-108), the second in

recommended that, in view of the fact that no government had ratified the 1939 Migration Convention and because of the changed circumstances brought about by the war, the Convention and the related Recommendations should be revised; and it undertook a great deal of preparatory work to that end. The UN's Economic and Social Council, a potential threat to the Organisation's autonomy and competence, actually encouraged the ILO in 1947 to go ahead. The revision was swiftly accomplished using the single-discussion procedure at the 1949 Conference. The resulting Migration for Employment Convention (Revised) (No. 97), was an early manifestation of European social-democratic views of how societies should handle migrant workers as well as of notions of manpower planning. Its equality provisions in Article 6 prohibit "discrimination in respect of nationality, race, religion, or sex" for lawfully resident foreign workers in matters such as remuneration, family allowances, holidays with pay, apprenticeship and training, membership of trade unions and collective bargaining, housing and social security. The accompanying Recommendation No. 86 stipulates in Paragraph 4 (1) that "it should be the general policy of Members to develop and utilise all possibilities of employment and for this purpose to facilitate the international distribution of manpower and in particular the movement of manpower from countries which have a surplus of manpower to those countries that have a deficiency". Annexed to it is a Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, which has inspired many countries at both ends of the migration chain.

Global comprehensive migration conventions concerned with labour migration tend to suffer from a ratification deficit or, more precisely, from a great reticence to ratify on the part of migrant-receiving countries. Not only do their policies and programmes often differ a little – sometimes greatly – from the prescription and proscriptions of international instruments, and they are unwilling to adjust them; but even if that is not the case ratification would probably oblige them to, *inter alia*, adopt non-discriminatory legislation and practical measures as well as to enforce them on dispersed family farms and construction sites, in big factories and small workshops, in ostentatious hotels and neighbourhood restaurants where dishes get washed by invisible hands. Effective implementation presupposes a certain political culture and not inconsiderable human and financial resources – unless ratification is merely meant to make an international statement of intent. Migrant-sending countries, although they also incur some new obligations, ratify migration conventions more readily because they want to improve the protection of their nationals or because they hope to entice receiving countries to follow them or for both reasons. Convention No. 97 had attracted 47 ratifications by the end of 2007, including those of Belgium (1953), Germany (1959), Italy (1952), the Netherlands (1952), Portugal (1978), Spain (1967) and the United Kingdom (1951), i.e. of countries that saw themselves as sending countries at the time of ratification and which only later became major receiving countries. China's Special Administrative Region of Hong Kong (1951), France (1954), Israel (1953), New Zealand (1950) and Uruguay (1954) are honourable exceptions to the rule in that they were receiving countries at the moment of ratification.²⁶

February-March 1948 (reported upon in GB, March 1948, 104th Session, Appendix XVII, see also the *ILR*, Vol. LVIII, No. 1 (February 1948), pp. 47-53) and the third in January 1949 (reported upon in GB, March 1949, 108th Session, Appendix III). The GB resolved in late 1950 that the Permanent Migration Committee would henceforth report to its new Manpower and Employment Committee; but this never happened because the Permanent Migration Committee stopped functioning and was officially disbanded by the GB in November 1958.

²⁶ In the case of Hong Kong it was the colonial master, Great Britain, who declared Convention No. 97 to be applicable to the territory. China notified the Director-General in 1997 of the continued application of the Convention in the Special Administrative Region.

One can generally observe that many more governments vote for adoption of the Organisation's Conventions than ratify them, often because they agree with the need for and general purpose of a certain standard but have problems with particular details or because the composition of the government called upon to ratify is not the same as the composition of the government which voted for adoption.²⁷ In the case of Convention No. 97, two major receiving countries' governments intervened heavily in 1949 to ensure that the text of the new standard would not pose ratification problems for them. The US government took the unusual step at the opening of the Conference to propose replacement of the Office's draft, elaborated on the basis of the work of the Permanent Migration Committee and responses by governments, by its own draft (Conference, 1949, 32nd Session, p. 568), to which the Conference agreed. Equally unusually, when the text of the Convention was submitted for formal approval to the full Conference the Canadian government requested amendment of an article approved by the relevant Conference committee because it could not ratify the version that had emerged; and the Conference acceded to its wish (*ibid.*, pp. 297f). Both governments did vote for adoption but neither has ratified Convention No. 97.

3.3 A major technical cooperation programme on migration – stopped by the Cold War

The Declaration of Philadelphia solemnly calls upon the Organization to “further among the nations of the world programmes which will achieve: (a) full employment and the raising of standards of living; (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being; (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement.” In line with the 1947 Truman Doctrine, the American David Morse, who had been elected Director-General in June 1948, wasted no time having the Office elaborate an ambitious technical cooperation programme encompassing manpower planning, vocational training and international migration. Its migration component was aimed in the first instance at Europe with its millions of unemployed and destitute in Austria, West Germany, Italy, Greece and the Netherlands, on the one side, and at traditional receiving countries, especially in Latin America, on the other. The new migrant workers standards of 1949 conferred additional legitimacy on the enterprise. What was missing was a central body to organise movements and funds to pay for transport, training, etc. David Morse pitched for both and planned for what would have been the ILO's largest technical cooperation project.²⁸ Working closely with the GB, he convened first a meeting of representatives of the UN and specialised agencies in Geneva and, immediately thereafter, a Preliminary Conference on Migration in April-May 1950.²⁹ The Preliminary Conference adopted a general conclusion that stressed the “outstanding role which falls to the International Labour Organisation in this matter” and recommended that it should draw up, after consultation with the governments concerned, appropriate proposals for submission to them at a subsequent meeting.

²⁷ Convention No. 97 was adopted by 113 votes for, 14 against and 24 abstentions. The communist delegations of Bulgaria, Czechoslovakia, Hungary and Poland voted against (nobody else did), with one Bulgarian and one Czechoslovakian government delegate being absent during the vote.

²⁸ The subject matter of section 3.3 has been the object of widely available publications such as Alcock, 1971, pp. 214-235, and Karatani, 2005.

²⁹ See e.g. his statement on migration to the Joint Session of the Manpower Committees in spring 1951, in GB, March 1951, 114th Session, pp. 50f. A brief account of the Preliminary Conference's discussions and an analysis of its recommendations was published in the *ILR*, Vol. LXII, No. 2 (August 1950), pp. 91-115.

Several events lent credibility, even urgency, to the enterprise. First, the US body administering the Marshall Plan offered US\$1 million in December 1949 to the Organisation to enable it to carry out an operational programme on migration. The money arrived in Geneva in June 1950 through what was then stilled called the OEEC, the later OECD. More was promised (see GB, June 1951, 116th Session, Appendix V, “Special Migratory Account”). Second, the foreign ministers of France, Great Britain and the US published a statement shortly after the closing of the Preliminary Conference on Migration which endorsed the activities of the ILO in respect of migration. Third, the impending termination of the International Refugee Organisation’s activities at the end of 1951 raised the question of which body should take care of the remaining refugees and the ships foreseen to transport them. The Office indicated that it stood ready to assume these responsibilities.³⁰

But it was not to be. Already during the summer of 1951 it became clear from the responses to the questionnaire sent out by the Office as a follow-up to the Preliminary Conference that there were hesitations, particularly on the part of the governments of Australia, Canada, Great Britain and the US – the same group, incidentally, which had emasculated the Labour Charter in Versailles some 32 years earlier (see section 2.2). Some governments were simply not willing to accord powers to an international organisation that might impinge on their sovereign right to admit and refuse entry to non-nationals³¹ – though they could always have opted to stay outside the scheme.³² More decisively, the Cold War and fear of communist infiltrators made the US House of Representatives in August 1951 attach language to financial provisions destined to move refugees and migrants out of Europe according to which “none of the fund made available ... should be allocated to any international organisation which has in its membership any communist, communist-dominated or communist-controlled country, to any subsidiary thereof or to any agency created by or stemming from such organisation”.³³ Although the Soviet Union was not at that time a member State of the Organisation (it joined in 1954), countries such as Czechoslovakia and Poland were, and it was feared that they could place agitators among the displaced persons or unemployed candidates for migration who might not be weeded out by the Office or its Migration Administration.

When, upon invitation of the Italian government, the Office convened its Migration Conference at Naples in October 1951 the rug had already been pulled from under its feet. For good measure, the Naples Conference was chaired by the head of the British delegation. David Morse stayed away and sent Assistant Director-General Jef Rens and the newly appointed Director of the relevant division, Francis Blanchard, a future Director-General. The delegates never actually discussed the Office’s plans. David Morse put a brave face on this setback when he reported to

³⁰ It is telling that in many of the Office’s statements and publications at the time the all-encompassing term “migration” replaced the traditional “migrant worker”.

³¹ Alcock writes that “the Australian antipathy to international handling of migration was doubtless accentuated by the fear that ... ultimately the white Australian policy was bound to come under discussion” (Alcock, 1971, p. 231).

³² That is, the Migration Administration, which was foreseen to be a governmental rather than a tripartite body and had similarities with the post-World War I International Emigration Commission (see section 2.3). For details of the Office’s plans, see Alcock, 1971, pp. 229f, and Karatani, 2005, pp. 533f.

³³ The wording is that of the Conference Committee of both Houses of Congress of October 1951, quoted without comment in a footnote in the *ILR*’s article on the Naples Conference, Vol. LXV, No. 2 (February 1952), p. 178.

the GB on the results of Naples (GB, November 1951, 117th Session, pp. 74f).³⁴ In the GB, the British government representative, who had chaired the Naples Conference a month earlier, heaped praise on the Office's "comprehensive, well-thought-out and well-constructed plan for dealing with the very serious and pressing problems of migration. That was true, whatever the fate of the plan might have been at Naples, or might be when, as was inevitable, it came to be considered in future meetings. He had said to Mr. Rens in public in Naples that perhaps the Director-General and his other colleagues had sown where others would reap..." (*ibid.*, p. 69).

And so it happened. The US government convened a meeting in Brussels a good month after the Naples Conference that almost all the countries attended which had participated in Naples plus a few others,³⁵ to which it submitted much of the Office's earlier plans in all but name. Brussels established an inter-governmental organisation with initially short time horizons and changing designations that for a long time was called the Intergovernmental Committee for European Migration (ICEM) and which has matured into the International Organisation for Migration (IOM). All its directors have been US citizens to date.

The events at and after Naples did not affect the Organisation's protection mandate as narrowly defined, but they severely clipped the Office's ambitions in the broader migration field and curtailed activities for two decades. ICEM remained a transport organisation for many years, but it inevitably and progressively pushed out the frontiers of its mandate, and today's IOM proudly proclaims itself to be *the migration agency* (subtitle of its website at <http://www.iom.int/jahia/jsp/index.jsp>). It has dwarfed the ILO's migration activities in terms of staff, projects and budgets. It does not bear thinking what might have been...

While so much momentum had built up in the run-up to the Naples Conference that, for a while, the Office kept on rendering relevant advisory services to European and Latin American countries, turning out migration publications³⁶ and issuing articles in the *ILR*,³⁷ soon the Office's migration activities withered away except for the supervision of the basic migration Convention No. 97 and the elaboration of new standards. The first was the Migrant Workers (Underdeveloped Countries) Recommendation (No. 100) of 1955, which was meant to respond to the growing heterogeneity of the Organisation and the needs of developing countries. The Equality of Treatment (Social Security) Convention (No. 118), which was of European social-democratic inspiration and put nationals and non-nationals on the same footing with respect to social security, was added in 1962 as an essential flanking measure that covered, unlike the old social security Convention No. 48, all branches of social security. The specific problems of workers who move between countries and might not qualify for any benefits were regulated in

³⁴ Morse's 114 pages of lectures at Cornell University make no reference to migrant workers or the Naples Conference except for one obscure sentence (Morse, 1969, p. 49). Blanchard's memoirs of his years with the ILO start with the Naples Conference (Blanchard, 2004).

³⁵ See the Naples and Brussels lists in *ILR*, Vol. LXV, No. 2 (February 1952) on pp. 171 and 182. The Office was also represented in Brussels despite the plea to the contrary by Léon Jouhaux, workers' vice-chairman of the GB: "... if a person was invited to go to a place where a cord had been prepared to strangle him, it was his duty to stay away" (GB, November 1951, 117th Session, p. 69).

³⁶ On advisory services and publications, see the "Survey of Migration Activities" in GB, May-June 1953, 122nd Session, pp. 111ff. *Migration*, a technical news summary, was issued at two-monthly intervals throughout 1952 and became a monthly supplement to *Industry and Labour* in 1953.

³⁷ Articles and reports kept appearing until the mid-1960s; then there was a lull. After the adoption of several Resolutions by the Conference at the beginning of the 1970s, the *ILR* again published articles on international migration questions in different parts of the world.

the 1982 Maintenance of Social Security Rights Convention (No. 157). Thus the social security rights of migrants had been covered in their key aspects. Although neither Convention No. 118 nor Convention No. 157 has attracted many ratifications (37 and 3, respectively), both have exerted a considerable and lasting influence on countries' practices, especially in Europe.

4. From the beginning of the 1970s to the early 1990s: New migrations, additional standards, painful interdependencies

4.1 Setting: New players, old problems

Lest the preceding pages convey the impression that the migration of workers during the first half of the 20th century involved only Europeans, it is time to catch up with what would nowadays be called South-South movements. Leaving aside the slave trade, indentured workers and the migration of native labour touched upon in the introduction, late colonial times witnessed many distinct streams of workers, generally flowing from the rural hinterland to coastal trading towns or mines, such as in Malaysia and South Africa, or to plantations, as in Gabon, Ghana, the Ivory Coast and also in Malaysia. Political independence scarcely impacted on the numbers of migrants, though sometimes on their composition. Sergio Ricca estimated that almost 10 per cent of sub-Saharan Africans of all ages lived outside their country of origin in the mid-1980s, (Ricca, 1990, p. 16). South-South migration was also an important feature in long-decolonised Latin America and in the Caribbean. For example, Haitians harvested sugar cane in the Dominican Republic; and this happened under such abusive conditions – including a per capita payment of some US\$10 into the private coffers of Haiti's President for life, the younger Duvalier ("Baby Doc"), for the privilege of recruitment – that several delegates to the 1981 Conference lodged a complaint, leading to the establishment of a commission of inquiry³⁸ and, among other things, the cessation of these poor-to-rich payments.³⁹

The double oil-price rises of October 1973 and 1979/80 permitted oil-exporting countries to launch huge infrastructure projects and many private households to enjoy unheard-of incomes. Both effects induced growing and increasingly diversified flows of workers to the Arab countries of the Gulf region, initially mainly from Egypt and Jordan, later from the Indian sub-continent and South-East Asia, even from the Republic of Korea, plus a sprinkling of engineers, technicians, managers, traders, etc., from advanced industrial countries. Nigeria first attracted Ghanaians and then workers from much of western Africa; but mismanagement and corruption dissipated the oil revenues; and in 1983 and again in 1985 a total of 2 million Ghanaians and others were expelled. Libya relied alternatively on Egyptians and Tunisians. Venezuela drew on Colombians and people from throughout Latin America. When the real price of oil dropped substantially during the second half of the 1980s, the inflow of construction workers slowed in Arab countries, but the demand for housemaids from Sri Lanka, the Philippines and elsewhere continued unabated. Libya forced Egyptians and Tunisians to leave beginning in August 1985,

³⁸ Unfair competition, the original British inspiration of the procedure (see footnote 12 above), was not in this case nor in any other case in the minds of the delegates or governments that set in motion the complaints procedure. For the findings and recommendations of the commission, see *Official Bulletin*, 1983, Vol. LXVI, Series B (Geneva: ILO), Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti ...

³⁹ An Indonesian Minister of Labour under Suharto practised a similar scheme some ten years later, giving him the means to set up a private bank. No complaint could be launched against his government because it had not ratified the relevant Conventions.

though here the causes had much to do with the sanctions imposed on the country and the political association with Washington attributed to the Egyptian and Tunisian governments.

The first oil-price rise made several European governments stop active recruitment. Family reunification continued to be tolerated; and within a few years as many dependents were present as foreign workers. Unemployment increased; well over two million workers returned to Mediterranean countries; but the “rotation” principle did not work as postulated. One reason was that western European economies had become dependent on sizeable numbers of migrant workers, especially at the bottom of the skill range; another was that liberal democracies cannot dispose of foreigners like illiberal regimes can.

Since the second oil-price rise, emigration pressure had been building up in developing countries and sections of western European populations began to feel uncomfortable. Because the once open doors were now largely closed, thousands of workers fleeing poverty tried to enter illegally. Those fleeing political persecution or armed conflict in Chile, Sri Lanka, Viet Nam, parts of Africa, the Middle East or, since the early 1990s, Milosevic’s wars in the Balkans found it relatively easy to obtain refugee status or to stay on if administrative decisions went against them.

4.2 A Convention against illegality and for equality

The gestation of Conventions since the 1970s has become less straightforward than during the first 50 years or so of the ILO’s existence. The 1975 Migrant Workers (Supplementary Provisions) Convention (No. 143) is an example. While the two political organs, the Organisation and the GB, had not touched on international migration questions for a decade and a half after the Naples Conference, a Resolution concerning action by the International Labour Organisation for migrant workers, which three European worker delegations managed to get adopted at the 1967 Conference, reminded everybody that the Organisation had a mandate to discharge in this field and called for revision of Convention No. 97. The Office lamely proposed to the GB that it would bear in mind the Resolution’s stipulations in its future activities, and the GB listlessly concurred (GB, November 1967, 170th Session, pp. 20 and 65f). No visible activity ensued – echoes of the treatment meted out to the Chinese worker’s Resolution of 1929 (see section 2.3). But migration problems in Africa and, particularly, in western Europe became increasingly acute, and in 1971 the Conference adopted another Resolution concerning ILO action for promoting the equality of migrant workers in all social and labour matters. This time the GB requested the Office to submit to it a comprehensive study within a year. Without actually waiting for the study, the GB during its pre-Conference Session in June 1972 pre-selected migrant workers as an agenda item for the 1974 Conference on the basis of a preliminary Office proposal to supplement Convention No. 97 by a Recommendation on questions such as social services for migrants and family reunification (GB, June 1972, 186th Session, pp. 30 and 54f). Later in that month, Italian trade unions proposed yet another Resolution concerning conditions and equality of treatment of migrant workers to the Conference, which it also adopted, whereupon the GB promptly confirmed that migrant workers would form part the 1974 Conference agenda. When it finally got around to discussing the Office’s study in February-March 1973, much time was taken up by criticising the data presented rather than looking at problems or pointing the way forward. When the 1974 Conference started the first round of discussions on possible new standards, western Europe’s doors were closing; clandestine migration was beginning to increase; trafficking was now on everybody’s lips, with newspapers reporting distressing stories; and the mood in some countries had turned ugly, with Algerians in

France suffering a bout of racist attacks that led the Algerian government at the beginning of the year to halt the further recruitment of workers.

The 1974 and 1975 Conferences elaborated a complex new Convention consisting of two parts that can be ratified independently of each other. The objective of part I is to suppress illegal migration and employment, part II aims not only at equality before the law but also at equal treatment in practice. The accompanying Recommendation No. 151 deals at length with questions of equality and social policies, including family reunification.

While the 1949 Convention had been adopted without real opposition from non-communist countries, there was considerable opposition to one or both parts of the 1975 Convention. When its draft was submitted to the full Conference for adoption, the 122 governmental votes cast that can be attributed to countries which at the time were clearly either *senders* or *receivers* of migrant workers split along lines that reveal the difficulties they had with the questions regulated in the new instrument.⁴⁰ Remembering that governments can be represented by two delegates,⁴¹ 88 of the 122 votes were cast in support of Convention No. 143, no government voted against it but 34 (28%) abstentions were recorded. Abstentions should really be viewed as negative rather than neutral votes in 1975 because a public vote against could have been interpreted as favouring illegal migration or opposing equality of opportunity and treatment. Of the governmental votes of developing countries that were *senders* of migrants, 44 (85%) approved the Convention, eight abstained. In the case of developing countries that were *receivers* of migrants, 25 (86%) of the governmental votes were cast in favour of the Convention with four abstentions.⁴² The governments of developed migrant-*sending* countries voted 100 per cent in favour (12 votes). But of the 29 votes of developed migrant-*receiving* countries' governments only 7 (24%) were positive, three quarters abstained.⁴³

It was foreseeable that Convention No. 143 would attract even fewer ratifications than Convention No. 97 – no more than 23 until the end of 2007. The known reluctance of important migrant-receiving countries plays a role, with two exceptions: Venezuela (1963) and social-democratic stalwart Sweden (1982), both of which had voted for adoption in 1975. Two European countries that were among the major senders of migrants ratified Convention No. 143 prior to turning into receivers of foreigners, Italy (1981) and Portugal (1978). Major developing

⁴⁰ I exclude from the count countries that formed part of the Soviet Union as well as countries that were not significant senders or receivers of migrants, such as Burma, Ethiopia and Norway.

⁴¹ However, the number of countries is larger than half the number of governmental votes cast because several African and Caribbean governments were represented by a single delegate.

For a Convention to be adopted, two-thirds of the votes cast by the delegates present are necessary on the final vote. The voting record shows 265 (77%) in favour and 81 (23%) abstentions, i.e. Convention No. 143 was close to being refused (see Conference, 1975, 60th Session, pp. 832f). Many employers abstained. Almost all worker delegates voted for it. The US worker delegate did not participate in the vote.

⁴² For the Convention voted e.g. Argentina, Brazil, the United Arab Emirates and Venezuela. Against it voted the governmental delegates of the Ivory Coast and Gabon, both of which were countries with much illegality and little equality. The Ivorian employer and worker delegates also abstained.

⁴³ The votes in favour were cast by Belgium, Luxembourg (1), New Zealand and Sweden. Abstentions were recorded for the two delegates of Australia, Austria, Canada, Denmark, France, West Germany, Israel, the Netherlands, Switzerland, the UK and the US. One explanation for the negative US vote is, I believe, the fact that in the early and middle 1970s the US administration and its various agencies were not yet resolved to combating the illegal inflow of Mexicans and others into agriculture and other sectors; the first significant steps in that direction were taken by the later Carter administration.

emigration countries that have committed themselves to its provisions include Burkina Faso (1978) and the Philippines (2006).

4.3 The WEP, technical cooperation and informal meetings

The Resolutions adopted by the Conference in 1971 and 1972 rekindled the embers left smouldering by the Naples Conference. But apart from the fire surrounding Convention No. 143, the Office's activities in the field of migrant workers were warmed by but a small flame. While activities had continued in the area of social security, only two new posts were funded, one to look after the new Convention and the other in the World Employment Programme (WEP). Francis Blanchard, elected Director-General in 1974, was said to have remarked that the international aspects of migrant worker questions were too conflictual to warrant a greater investment – traces, no doubt, of his Naples experience. It was not surprising, therefore, that the Resolution concerning future ILO action in the field of migrant workers adopted at the 1974 Conference which requested the Office to, *inter alia*, give priority to the problem of migrant workers and prepare a co-ordinated programme of action to obviate the need for emigration, fell on deaf ears and that a Meeting of Experts on Migrant Workers convened in October 1975 had no impact either.⁴⁴

The WEP was initially a think-tank generating studies and holding meetings to discuss research findings. It soon broke with the traditional philosophy of the ILO (and OECD) that economic growth should not be held up for lack of labour as long as surplus workers were available elsewhere;⁴⁵ and it looked empirically into the issue of taking the work to where Mediterranean migrants came from.⁴⁶ WEP research laid the knowledge base for the new major migrant-receiving region of the Gulf (summarized in Birks and Sinclair, 1980) and shed fresh light on the employment of foreign migrants in apartheid South Africa, which included a proposal to set up an “OPEC of labour suppliers” (see Böhning, 1981, ch. 7). The proposal received some publicity; it was discussed on the side-lines of a regional UN meeting on migrant workers in Lusaka; but it was shunned by South Africa's labour suppliers, though ministers of labour at least began to meet regularly to exchange information.

⁴⁴ Meetings of Experts generally have the purpose of orienting future ILO activities. The report of the 1975 Meeting of Experts can be found in GB doc., November 1975, *GB.198/9/17*, the GB's discussion on it in GB, March 1976, 199th Session, pp. II/4ff.

⁴⁵ According to paragraphs 39 and 40 of the Declaration of Principles and Programme of Action adopted at the 1976 Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour, countries “should, where international migration takes place, adopt policies designed .. to create more employment opportunities and better conditions of work in countries of emigration so as to reduce the need to migrate to find employment; and ... Members which habitually or repeatedly admit significant numbers of foreign workers with a view to employment should, when such workers come from developing countries, endeavour to cooperate more fully in the development of such countries, by appropriate intensified capital movements, the expansion of trade, the transfer of technical knowledge and assistance in the vocational training of local workers, in order to establish an effective alternative to migration for employment and to assist the countries in question in improving their economic and employment situation.” Irrespective of their intrinsic merits, these ideas also reflect the contemporaneous demands by developing countries for a New International Economic Order. The ideas were incorporated textually in the 1984 Recommendation concerning Employment Policy (No. 169), section X, along with a few others concerning return migration and international cooperation.

⁴⁶ Hiemenz and Schatz, 1979, a publication that was differently appreciated by e.g. Ian Guest in *The Guardian* (10 October 1979), who – falsely – accused the study of raising the threat of cheap imports from developing countries, and Jagdish Bhagwati in the *Journal of Economic Literature* (September 1980), who welcomed it as useful.

No technical cooperation was undertaken in favour of migrant workers, outside social security, until the WEP added this practical dimension to its theoretical studies. As is generally the case with small-scale technical cooperation, some activities left positive traces, others not. A good start was made at the beginning of the 1980s with the UNDP-funded ILO Asian Regional Programme on International Labour Migration that sought to respond to demands for models of how sending countries might be able to extend their protective reach to nationals going to work in countries with weak labour institutions. The quick spread of practices such as model contracts, welfare funds, bond requirements prior to licensing private recruitment agencies, pre-departure training, special labour attaché services, etc., was in no small measure due to the Office's efforts to get governments to share innovative ideas on how to deal with a difficult new responsibility. An example of a technical cooperation project in Africa towards the end of the decade, in the context of the retrenchment of Mozambican labour from South African mines, was to help returning migrants to irrigate fields adjacent to the Limpopo river; but it had to be closed down after a while when FRELIMO raided the project site and took away valuable equipment. An example of technical advisory services in Europe was the quick response to a foresightful Russian official's invitation, in the dying days of the Soviet Union, to explain how emigration and immigration could be handled politically and institutionally after independence and without communist-type restrictions. Several days of presentations by Office staff were taken down word by word. Some of them were clearly reflected in the structure of the country's later Federal Migration Service and the emergence of private recruitment agents. In 1992, as migration pressures kept increasing globally and aid allocations threatened to decline, a joint ILO-UNHCR meeting was organised to explore the potential of directing international aid to the provision of alternative employment for potential emigrants (see Böhning and Schloeter, 1994). There was a subsequent attempt to mobilise donors in favour of these ideas for the Maghreb region; but only Italian seed money became available for micro-enterprises in Morocco and Tunisia until the question was given some attention by the European Union in the context of its Mediterranean programmes.

Beginning in 1984, the WEP also convened a number of informal meetings to bring together migrant-sending and migrant-receiving countries that had difficulties talking to each other in formal settings. These Round Tables, as they were called, aimed principally at the exploitative recruitment and employment of migrant workers in Arab countries but also lent themselves to covering expulsions in Africa and touchy questions in Europe, such as the status of third-country nationals in the European Single Market. Despite their decidedly informal nature – Arab and African governments had to be assured time and again that there would be no ILO follow-up of any kind – the Round Tables proved quite contentious. For instance, one major Arab receiving country threatened to leave the Organisation unless a working paper was withdrawn that had been drafted by a high-level Pakistani civil servant and circulated by the Office; and African countries insisted on their right to collective expulsion of foreign workers. Moreover, in Central and Eastern Europe, an Informal Network on Foreign Labour was set up in 1996 to enable governments, workers' and employers' organisations of countries that were formerly part of the Soviet Union to discuss issues under the Office's auspices which they were unwilling to discuss bilaterally, in particular the illegal flows of workers across their borders. For some countries the Informal Network on Foreign Labour also provided help in adapting to the norms and practices of the body they wanted to join as soon as possible, the European Union.⁴⁷

⁴⁷ See ILO, 2002. The Informal Network on Foreign Labour continues to meet (see also <http://www.ilo.org/public/english/protection/migrant/projects/infnetce>).

4.4 Elaboration of the UN Convention

A range of developing emigration countries was unhappy with the interdiction of clandestine migration and illegal employment as formulated in part I of Convention No. 143. Led by Mexico and Morocco,⁴⁸ ECOSOC and the UN General Assembly adopted several resolutions at the end of the 1970s that resulted in the establishment in October 1980 of an open-ended working group of the General Assembly charged with the elaboration of a convention on migrant workers.⁴⁹ Fearful of an encroachment on the Organisation's competence, some GB members, particularly among the groups of employers and workers, were quite hostile to what they saw as an initiative by developing countries' governments to cut them out.⁵⁰ But wisdom prevailed; the majority of the GB wanted the Office to assist the UN General Assembly's working group. Thus, a paper was submitted to New York and a staff member attended the sessions. When the first Mexican-Moroccan draft was on the table, many European and other representatives were shocked because it appeared to open the doors wide to illegal migration and employment. A group of small or medium-size emigration and immigration countries from the northern rim of the Mediterranean and from Scandinavia (Greece, Italy, Portugal, Spain and Finland, Norway, Sweden) whose governments were headed by social-democratic parties at the beginning of the 1980s asked the Office for technical assistance in preparing a counter proposal – on the understanding that the draft could contain provisions of the UN's covenants and the Organisation's standards but should not go beyond them. The Office accepted. Staff now drafted most of the future convention's articles, put the proposals to the Mediterranean-Scandinavian group of countries, which tended to modify them slightly, and the Mediterranean-Scandinavian group submitted these texts to the New York working group, where they were sometimes accepted without much change, sometimes after considerable revision. In the end, the 1990 convention on the rights of all migrant workers and members of their families, although quite different in structure from the Organisation's existing standards, is more comprehensive and detailed than these are; in some ways it updates and modernizes them; and it is broadly at the same level of protection except in the field of social security. Furthermore, the Office has a statutory seat on the governmental committee that monitors the application of this UN convention.

4.5 Many expulsions, some compensation

Five major expulsions of foreigners occurred during the period 1983-1990 in Nigeria, Libya, Mauritania, Bulgaria and Iraq which occasioned different responses by the Office and the GB. When Nigeria expelled close to 1.5 million Ghanaians in 1983 and another 150,000 two years later, bilateral and global donors came to Ghana's assistance, but the Office was not involved because it did not have the technical cooperation capacity to react to countries' emergency needs at the time – it acquired it many years later.

The expulsions by Libya mentioned in section 4.1 involved some 15,000 Egyptian workers, as many dependents, and at least 30,000 Tunisian workers. The Egyptian and Tunisian governments, lacking diplomatic relations with Libya, first sought the aid of the UN but were told that the organisation could do nothing for them. Tunisia, realising that both countries had ratified three relevant Conventions – concerning wages (No. 95), discrimination (No. 111) and

⁴⁸ Whose ministry of labour and non-governmental representatives had voted in favour of Convention No. 143 in 1975. In New York, the ministry of foreign affairs delegates displayed a different perspective.

⁴⁹ For the background, political and other factors, see Böhning, 1991, and the article by the vice-chairman of the UN General Assembly's working group and later staff member, Juhani Lönnroth, 1991.

⁵⁰ The discussions played out mainly in the GB's International Organisations Committee and were repeated in the full GB when it considered the Committee's reports.

social security (No. 118) – submitted a complaint under the inter-State procedure of the Organisation’s Constitution. Although Egypt had also ratified Convention Nos. 95 and 111 and could have opted for the inter-State complaints procedure, it was the Egyptian trade union federation that lodged a so-called Representation two months after the Tunisian complaint.⁵¹ Francis Blanchard and his senior advisers persuaded the Tunisian government to put its complaint on hold and attempt to solve the claims of migrant workers’ unpaid wages, social security entitlements, lost personal effects, etc., on the basis of documents provided by individuals and transmitted to Libyan specialists by the Office acting as intermediary.⁵² In the light of fruitful discussions between the two parties, the Tunisian government withdrew its complaint when a full settlement was in sight, and diplomatic relations were restored by the end 1987. The same approach was proposed to the Libyan and Egyptian trade union organisations and accepted in principle by both sides but was not given effect in practice. Hence, the GB concluded the Representation procedure by requesting the government of Libya to take the necessary measures and pay any sums due to concerned Egyptian workers.

Ethnic clashes between Mauritians and Senegalese in April-May 1989 caused Mauritania to exile tens of thousands of black Africans, including long-established civil servants of Senegalese descent possessing Mauritanian nationality; and it led to the flight of many Mauritians from Senegal. The National Confederation of Workers of Senegal lodged a Representation against Mauritania concerning wages (Convention No. 95), social security (Convention Nos. 102 and 118), discrimination (Convention No. 111) and employment (Convention No. 122). There was no room in this case for either needs assessments or the Director-General’s good offices. The GB concluded the case by finding that Mauritania had violated Convention Nos. 95, 111 and 118 with respect to Mauritanian nationals of Senegalese origin but that it had insufficient information to pronounce on the other two Conventions. It invited the Mauritanian government to settle the wages due under Convention No. 95 and make reparations under Convention No. 111 for the prejudice suffered by Mauritanian nationals who had been discriminated against (GB doc., February-March 1991, *GB.249/6/1*).

Another case of something not far removed from ethnic cleansing happened in 1989 when Bulgarian President Zhivkov, shortly before being forced from power, played the ethnic card by forcing perhaps 270,000 Muslims Turks, whose origins date back to the Ottoman Empire, to seek refuge in Turkey. The Office was asked to field a needs-assessment mission, which it did and which loosened the purse strings of the US Congress in favour of Turkish integration programmes to the tune of US\$10 million.

When Iraq invaded Kuwait in August 1990, some two million economically active foreigners and 750,000 family members (mainly Jordanian nationals, most of whom were actually Palestinians) were directly affected in the two countries, including an estimated 850,000 Egyptian workers in Iraq who attracted the ire of Saddam Hussein because their home country’s government sided

⁵¹ A Representation is a form of complaint that non-governmental organisations can make under article 24 of the Constitution and which is handled by the GB directly rather than by a special commission of inquiry with more far-reaching powers. As complaints of one government against another had given rise to counter complaints, governments had become wary of the inter-State procedure and, in some one party-one union regimes, sometimes mobilised their trade unions instead of their ministries to make a political point.

⁵² Much of this case has come out into the open in GB doc., May-June 1988, *GB.240/14/25*. Francis Blanchard’s memoirs (2004) modestly leave aside his successful good offices in this case.

with Kuwait.⁵³ Most migrants fled from Kuwait or were forced to leave, some of the women workers in the most harrowing circumstances – as I was told in Jordanian camps where I interviewed them in October to gather first-hand information on unpaid wages, savings left behind, personal effects damaged, lost or stolen, etc. The November Session of the GB duly had a paper before it and was followed by a meeting of labour ministers from Bangladesh, Egypt, Jordan, Sri Lanka, Yemen and high-level representatives of India, Pakistan and the Philippines, called by then Director-General Michel Hansenne, to which were also invited UN representatives, as well as by a more technical-level Round Table in Bangkok in December 1990. The ILO Asian Regional Programme on International Labour Migration immediately stepped in to help Bangladesh, Pakistan, the Philippines and Sri Lanka to process return migrants and to document their losses case by case. And a special project was set up in Sri Lanka for the thousands of women domestic workers who had suffered abuses and experienced great difficulties in reintegrating back home.

The UN Security Council established a subsidiary organ, the UN Compensation Commission, to deal with the fall-out of Iraq's invasion of Kuwait by way of withholding a percentage of the proceeds generated by Iraqi oil exports; and it directed the UN Secretary-General, Pérez de Cuéllar, to submit proposals to that end. Michel Hansenne addressed a letter to him on 26 April 1991 in which he urged the Secretary-General to give consideration to the inclusion of claims from migrant workers and their families directly affected by Iraq's invasion of Kuwait. Six days later, Pérez de Cuéllar cautiously suggested to the Security Council that “there would be some merit in providing for a priority consideration of small claims relating to losses by individuals ... before the consideration of claims relating to losses by foreign Governments and by corporations” (UN Security Council doc., 1991, p. 8). The fact that staff had informed secretariat members of the UN Compensation Commission of the Office-driven registration systems for return migrants, ready for governments and the Commission to use, doubtlessly helped the UN Compensation Commission, in its very first decision, not only to cover individuals forced to leave Iraq or Kuwait but to compensate them before any other category.⁵⁴ Although in the end this took more time than anticipated, individual return migrants who claimed nothing else generally received a standard compensation of US\$4,000 (US\$8,000 if family members had been with them), or they received US\$2,500 (US\$5,000 with family members) to start with where they laid claim to loss of personal effects, savings, etc.⁵⁵

⁵³ Three GB papers provide information on migrant workers and the Gulf crisis: GB doc., November 1990 and February 1991, *GB.248/20/8*; GB doc., February-March 1991, *GB.249/15/7*, which contains the Office's estimate of the numbers involved; and GB doc., May-June 1991, *GB.250/15/25*, which concerns a Representation lodged by the Federation of Egyptian Trade Unions against Iraq.

⁵⁴ The UN Compensation Commission proclaimed: “Given the traditional emphasis ... for the losses suffered by Governments and corporations, this humanitarian decision to focus first on urgent individual claims marked a significant step in the evolution of international claims practice” (<http://www2.unog.ch/uncc/clmsproc.htm>).

⁵⁵ The number of migrants involved can be seen in <http://www2.unog.ch/uncc/claims/... .htm>. They tally reasonably well with the Office's pre-invasion estimate in GB doc., February-March 1991, *GB.249/15/7*, except for Egyptians, who were more numerous in both Iraq and Kuwait than the Office had estimated: The Central Bank of Egypt submitted a claim on behalf of over 800,000 workers in Iraq for the non-transfer of remittances; a further 300,000 Egyptian individuals claimed under the individual facility and 93,000 under the facility for additional damages.

5. From the early 1990s to the present time: Living with globalisation

5.1 Setting: More migrants, more countries, more complexities

Despite the ILO's efforts starting with the 1922 Migration Statistics Recommendation, to this day countries tend to be unsatisfied with migration statistics,⁵⁶ largely because they count migrant workers very differently. To simplify, settlement countries' censuses record "foreign-born" without regard to nationality whereas most other countries count "non-nationals" irrespective of whether they were born within the country or not. Measurement difficulties are compounded by the broad scope of notions such as *economic* migration, the arbitrariness of cut-off points such as 12 months and the indeterminate nature of what constitutes *migration* or who is a *worker*, particularly since the erstwhile distinctions among *wage or salary earners* and *self-employed, independent, professionals* or *highly qualified* have become blurred. Those distinctions remain important for questions regarding the protection of vulnerable groups, who are mostly low-skilled wage labourers.⁵⁷ But analyses of the economic impact of the presence of foreigners would fail to capture important aspects if they left out, say, top managers of multinational firms who spend months to set up a production unit far from headquarters – and this kind of temporary movement should ultimately be reflected in the statistics of international economic migration (and not only under the administratively convenient heading of *business visitors* or similar categorisations).

A variety of regional and global data using comparable reference points indicate that the number of economically active foreigners in migrant-receiving countries has been growing. For example, western Europe hosted about 7 million economically active foreigners plus 6.5 million dependents in 1975, 9 million economically active plus 13 million dependents in 1995, and perhaps 11 million economically active and 14 million dependents by the end of 2007. The UN's global estimate of the number of foreign-born persons came to 87 million in 1975, 120 million in 1990 before the dissolution of the Soviet Union, 165 million in 1995 after its dissolution and 191 million in 2005 (UN Population Division, 2006). Considering that the refugee population shrunk in the second half of the 1990s and that the number of countries stayed the same, each year of this period must have added nearly two million economically active foreigners to the stock. Office staff calculated that the number of major migrant-receiving countries had grown from 39 to 53 between 1970 and 1990, the number of major sending countries from 29 to 46 and the number of countries qualifying simultaneously as major receivers and major senders from 4 to 15.⁵⁸ This evolution has doubtlessly continued.

Not only is international economic migration becoming a truly global phenomenon but the group of highly qualified that is such an inherent and important facet of contemporary globalisation has been growing faster than the proportion of unskilled for years, at least in advanced countries.⁵⁹ Small and medium-size developing countries have been suffering for decades from the outflow of highly-qualified workers, technicians and professionals – the brain drain – in crucial sectors such as education and health services. One manifestation of the growing complexity of international

⁵⁶ More member States of the Organisation expressed a need for technical assistance in this than in any other area: 50 out of the 93 countries which responded to the ILO Migration Survey 2003 (ILO, 2004a, p. 35).

⁵⁷ However, the language of international human rights must apply to all persons; even highly-qualified persons are in practice not immune from arbitrary decisions by governments or employers.

⁵⁸ Böhning and Oishi, 1995. See also GB doc., March 1996, 265th Session, *GB.265/EST/2*. All figures exclude the Soviet Union and Yugoslavia as well as their successor States.

⁵⁹ See the global data in Manolo Abella's contribution to Kuptsch and Pang, 2006, the case studies in that volume and the country information in the ILO Migration Survey 2003 (ILO, 2004a), notably as regards Australia, Canada, Denmark, Japan, the Netherlands, New Zealand, Sweden, Switzerland and the United Kingdom.

economic migration is the fact that many more women migrate independently of men than in the past, i.e. not as dependents. Another is the apparently increasing number of foreigners who are economically active without the requisite authorisations – including those who stay around until they fall into the hands of exploitative intermediaries or employers, others who are smuggled across borders and still others who are trafficked, sometimes followed by forced labour conditions.⁶⁰ The US seems to attract the largest number, possibly 10 million. South-South migration can give rise to proportions of unauthorised to regular foreign or national workers that are even higher than those of the US as, for instance, in South Africa and Malaysia. In the latter, the stock of unauthorised foreigners has tended to oscillate between 0.5 and 1.5 million depending on economic conditions, the resort to massive collective expulsions by the government and the not infrequently harsh interventions of private vigilante groups.

One might expect globalisation to induce at least advanced countries to increase the proportion of temporarily admitted foreigners relative to settlement migrants on the grounds that welfare states, threatened as they are by open capital borders, would want to minimise the social entitlements of new entrants by running low-rights “guest-worker” or similar programmes. But, outside Australia and New Zealand, the empirical evidence is not clear on this score.

A problem that dates back to the first oil-price rise in western Europe and which has been worsened by the advance of globalisation is the short- and long-term unemployment suffered by millions of first and second-generation immigrants. Economic and technological forces have excluded some of them from mainstream society; the discrimination of foreigners or foreign-looking persons has been another major factor; and the fear of terrorism since September 2001 has added security concerns that may have reinforced discriminatory behaviour, especially where ministries of the interior have assumed a central role in the administration of migrant worker populations.

The end of the 20th century and beginning of the 21st century witnessed an upsurge in initiatives on questions of international migration. For example, in 1999 a mandate was created for a Special Rapporteur on the Human Rights of Migrants by the UN Commission of Human Rights (Resolution 1999/44). In June 2001, Japan sponsored the establishment of an Independent Global Commission on Human Security, co-chaired by Sadako Ogata, former UN High Commissioner for Refugees, and Amartya Sen, Nobel Prize winner for economics.⁶¹ In the same month, the Swiss Federal Department of Justice and Police launched the so-called *Berne Initiative*, which aims at achieving better management of migration at regional and global level through enhanced inter-state cooperation.⁶² In December 2003, UN Secretary-General Kofi Annan convened a Global Commission on International Migration.⁶³ Also in December 2003 the General Assembly decided to devote a high-level dialogue to international migration and

⁶⁰ Trafficking is the ugly underside of globalization. In November 2001, the GB accepted the Office’s proposal to set up a Special Action Programme to Combat Forced Labour, which involves the Programme for the Promotion of the Declaration, the International Programme for the Elimination of Child Labour and the International Migration Programme. Studies, legislative advice and technical cooperation projects are its main means of action. Technical cooperation has included study tours of high-level Chinese officials to European countries looking for ways to handle the problem of “minor criminals” without incurring forced labour.

⁶¹ For its 2003 report, see <http://www.humansecurity-chs.org/finalreport/English/FinalReport.pdf>.

⁶² See http://www.bfm.admin.ch/bfm/en/home/themen/internationales/multilaterales/international_agenda.html.

⁶³ For its 2005 report, see <http://www.gcim.org/en/>.

development during its 61st session in 2006.⁶⁴ The Office was involved in some of these, worked closely with regional partners⁶⁵ and, as will be seen, took initiatives of its own.

5.2 The demonstration that discrimination is widespread

At the beginning of the 1990s the Office raised the discrimination problem in a low-key approach in an ILO-friendly region, western Europe, rather than by setting up a global programme requiring the political consent of the assembled migrant-receiving countries.⁶⁶ To anyone willing to see, it was clear that discrimination in access to employment was pervasive and that many countries' laws were either vague or outdated or stuck in a penal mode that required a basis of proof more appropriate for murder trials than for determining labour market discrimination and which did not permit the injured party to claim compensation for the material or immaterial damage suffered. Backed by part II of Convention No. 143 and Recommendation No. 151, staff contacted a few governments and NGOs (a) to persuade them to investigate whether the lack of education and qualifications was behind the large-scale exclusion of first and second-generation immigrants from the labour market or whether it was discrimination by gatekeepers and employers, and (b) to offer advice and training to combat any economically counterproductive and socially disastrous practices. There were advantages and disadvantages for governments in involving an international organisation in such a contentious emotional issue; and initially there were few takers and some outright refusals. For example, the French government refused joining the project for a dozen years, preferring to believe that the lack of education, training and improved housing was at the heart of the unemployment problem. When it finally joined in 2004 (see Cédiey and Foroni, 2007), the riots of second-generation youngsters in the *banlieues* that entailed a national state of emergency were only a year away. And the German government, after a local NGO presented in public the results of tests that it had conducted (see Goldberg *et al.*, 1996), called a press conference next day to deny that Turks or any other ethnic group encountered significant discrimination. The project was difficult for the Office and painful for the governments. Still, some European ministries of labour were prepared to fund the Office's activities that were run on a shoe-string budget.

A Dutch professor of criminology refined a methodology (Bovenkerk, 1992) that I had first learned of as a young researcher in England, referred to as practice tests or situation testing, which in essence had two identically qualified persons – one a national, the other a first or second-generation immigrant – apply for the same vacancy. Practice tests, instead of replicating attitudes and socially desirable answers, reveal managers' or employers' actual behaviour when contacted on the phone, after glancing at CVs or written applications or during job interviews. There was clear evidence of discrimination.⁶⁷ Depending on the country, first or second-generation immigrants had to make between 3 and 10 times as many attempts as nationals to be considered for a job.

⁶⁴ For the Secretary-General's input report to the high-level dialogue, see http://www.un.org/esa/population/publications/ittmigreport/Int_Migration_Report.pdf.

⁶⁵ See, ILO, 2004c, pp. 105.

⁶⁶ The Office's activities concerned with migrant workers – not only those concerning discrimination questions – were fairly regularly reported to the GB's Discrimination Committee and, when this Committee was abolished after the demise of *apartheid*, to the GB's Committee on Legal Issues and International Labour Standards, starting in 1994.

⁶⁷ The first set of tests is summarized in Zegers de Beijl, 2000. Tests were carried out under Office auspices in Belgium, France, Germany, Italy, the Netherlands, Spain and Sweden. The Office's methodology was also used by independent researchers in Denmark, Switzerland and the US. Country data can be accessed in working paper form at <http://www.ilo.org/public/english/protection/migrant/publ/imp-list.htm>.

Actual impacts have been positive, with some exceptions. In Belgium, for example, the tests have been credited with shaping the 2003 national law and regional measures adopted in response to the European Union's Directive on racism (Council Directive 2000/43/EC of 29 June 2000); the national labour inspectorate added the detection of discrimination to its training and monitoring activities; the three national trade union federations engaged in campaigns against discrimination; and the national federation of employers elaborated a code of practice.⁶⁸ Furthermore, officials of the European Fundamental Rights Agency (formerly the European Union's Monitoring Centre on Racism and Xenophobia) have discussed with the Office whether practice tests could be used to monitor progress over time in EU member States. In France, however, the *Conseil constitutionnel* interdicted as recently as November 2007 the collection by the government of data pertaining to racial or ethnic origin, presumably in the conviction that this would not help French workers.⁶⁹ At the level of private enterprises, on the other hand, leading French firms have embraced the notion that "diversity makes good business". For example Adecco, a world leader in human resources and the major temporary work agency in France, has started using the Office's methodology of practice tests to check on its own recruiters.⁷⁰

5.3 Expert meetings, no new or revised standards and differing multilateral frameworks

Looked at in terms of skill distribution, migration streams have increasingly taken on the shape of a cocktail or hour glass – disproportionate volumes at the top and bottom. Migrant workers at the bottom have been buffeted by globalisation's deregulatory and anti-interventionist dimensions where they have not been rendered unemployed by its technological dimension and thus more desperate in searching for work. The Office, aware of the lack of enthusiasm by governments and employers for further standard setting in this field, especially after the UN convention's ten years of gestation, nevertheless felt that it should attempt to put down markers for the protection of the most vulnerable groups of workers, albeit in the form of soft law, before national legislation and practices would totally succumb to globalisation.⁷¹ Hooking its initiative on a 1992 Conference Resolution concerning the role of the ILO in the protection and promotion of the rights of migrant workers and their families, a paper eventually reached the GB in March 1996 (GB doc., March 1996, 265th Session, *GB.265/ESP/2*), which proposed to hold a Meeting of Experts focused either on revising standards or on vulnerable migrants and abusive recruitment by private agents. The GB opted for temporary migrants and private recruitment agents. The Meeting of Experts, held in April 1997, elaborated (i) guidelines concerning, *inter alia*, accommodation, terms of employment and social security of migrants in time-bound employment; (ii) special protective measures for workers recruited by private agents; and (iii) a

⁶⁸ Council Directive 2000/43/EC also embraced the shifting of the burden of proof from the victim to the perpetrator of discrimination in civil law cases that was seen by the Office as a necessary tool in redressing discrimination in employment (see Kulke's contribution in Goldberg *et al.*, 1996).

⁶⁹ See <http://www.conseil-constitutionnel.fr/decision/2007/2007557/2007557dc.htm>.

For a contrast, see Hamid Senni's article "France's hidden discrimination" in the *International Herald Tribune*, 13 December 2007, which followed hard on the heels of another outbreak of anger in the *banlieues*. He relates how his name and skin colour prevented him from getting a decent job in France despite four degrees, including an MBA, a few years of management experience in top European companies and command of four languages. He was eventually offered a job selling vacuum cleaners door-to-door for six months but left for London and now heads a diversity consultancy firm.

⁷⁰ See http://www.adecco.fr/adeccott/6_a_propos/espace_presse/communiqu_e_presse1.asp, *communiqué de presse*, 10/03/08.

⁷¹ The most vulnerable groups were associated with temporary migration schemes, i.e. seasonal workers, special purpose workers, cross-border service providers as well as trainees and students who work, see ILO, 1997.

new facility in the form of pattern or practice studies of the exploitation of migrant workers not falling under Convention-based procedures. The GB endorsed the guidelines (GB doc., November 1997, 270th Session, *GB.270/5*, pp. IV/4f). The new facility has never been put to use.

Shortly afterwards, the general-survey procedure was set in motion. A “general survey” is entrusted to the independent Committee of Experts on the Application of Conventions and Recommendations on the basis of answers by non-ratifying countries to a questionnaire and the information in Office files regarding laws and practices of ratifying countries with respect to Convention Nos. 97 and 143 and their accompanying Recommendations. The Committee of Experts’ report to the Conference concluded that the Organisation’s standards, even though they contained a few outdated provisions and had a few gaps, were “still valid today” (ILO, 1999, p. 246). It saw two options: One would be to keep the existing instruments and to cover gaps through protocols; the other would be to revise them in various ways. When countries’ political representatives discussed the Committee of Experts’ report, many different views were aired, but a majority favoured a broad discussion on the subject of migrant workers generally (see Conference, 1999, 87th Session, pp. 23/46ff). In March 2002 the GB finally agreed to put the item on the agenda of the 2004 Conference.

Shortly before the general discussion on migration took place and amidst the upsurge of interest in various parts of the world, another independent body made its voice heard in this field, the World Commission on the Social Dimension of Globalization, which was established by the Organization in 2002. Its report of February 2004 touched importantly on questions of international economic migration, large passages reflecting the handwriting of Indian economist Deepak Nayyar. The World Commission called for the initiation of a “preparatory process towards a more general institutional framework for the movement of people across national borders. This means a transparent and uniform system, based on rules rather than discretion, for those who wish to move across borders. The ultimate objective would be to create a multilateral framework for immigration laws and consular practices, to be negotiated by governments, that would govern cross-border movements of people. This would be similar to multilateral frameworks that already exist, or are currently under discussion, concerning the cross-border movement of goods, services, technology, investment and information” (ILO, 2004b, p. 99).⁷²

By the time the World Commission’s report was published, the Office finished its input report for the June 2004 Conference (ILO, 2004c). That report was able to refer to the World Commission’s views on migration (*ibid.*, p. 129); and it mentioned the “need for an international regime based on the rule of law, that establishes common parameters for all, clear accountabilities, and mechanisms for reporting and monitoring” (*ibid.*, p. 127); but it was otherwise unspecific. Its most specific proposals actually related to standard setting, where the questions of the revision of existing instruments or elaboration of new ones were raised (*ibid.*, p. 96f).

⁷² Elsewhere the report states: “A major gap in the current institutional structure for the global economy is the absence of a multilateral framework for governing the cross-border movement of people. The GATS ‘Mode 4’ provision is restricted to the temporary movement of service providers and covers only a tiny fraction of the cross-border movement of labour. There are also a number of international conventions which seek to protect migrant workers and combat trafficking in people. However, no comprehensive multilateral framework exists for the cross-border movement of people. This is a serious omission” (ILO, 2004b, p. 95). It is noteworthy that the references of the World Commission are to people rather than migrant workers in the narrow sense, suggesting the inclusion of self-employed, independent professionals and the like, i.e. categories that I would subsume under the term economic migration.

At the 2004 Conference, the employer group displayed a clear attitude: It did not want governments to ratify Convention Nos. 97 and 143; it did not want the ILO to promote them, let alone revise them or elaborate new standards; it wanted to assign them to the dustbin of history and have them replaced by a non-binding multilateral framework which takes account of national labour market needs (see Conference, 2004, 92nd Session, pp. 22/1ff and 26/25ff). The worker representatives, who believed in the continued relevance of the Organisation's migration standards and 1997 guidelines, intended to latch on to the World Commission's ideas of a multilateral framework. But the workers had to swim with the stream that carried a framework which was different in form and content. To save face, the workers insisted that it be rights-based and called for the establishment of a new permanent committee of the GB on migration, a suggestion that was not supported in 2004 except by the government of migrant-sending Sri Lanka. In general terms, while a number of developing emigration countries' governments tended to side with the workers, many immigration countries' governments were closer to the employers, with much variation in between. The governments traditionally most reluctant to see ILO involved in migrant workers questions – Australia, Canada, the UK and the US – essentially supported the employers but went as far as doubting the Organisation's mandate to create a multilateral framework on international labour migration. The main outcome of the Conference's discussions was a plan of action that included the “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*” – a typical international drafting compromise which gives something to everybody.

The further elaboration of the *Framework* was entrusted to the GB, as was the establishment of a permanent committee on migration. The Office's input paper to the autumn 2004 meeting refrained from asking the GB to set up another committee but proposed a Meeting of Experts to flesh out the non-binding principles and guidelines (GB doc., November 2004, 291st Session, GB.291/3/1). Although one receiving and one sending country's government (Brazil and the Philippines) now spoke in favour of a new committee, the GB gave short shrift to the idea and convened a Meeting of Experts. Working on yet another Office text, the Experts in October-November 2005 drafted an *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*; and the GB decided in March 2006 that this *Framework* should be published and disseminated.⁷³

What marks could one give to this laborious and sometimes tense process? Good marks as far as the content is concerned, which can be a source of information where information is lacking;⁷⁴ pass marks as regards the non-binding nature of this instrument, which bears globalisation's unmistakable imprint; bad marks if one compares the *Framework* with what the Global Commission had in mind when it proposed a “preparatory process towards a more general institutional framework for the movement of people across national borders ... based on rules rather than discretion” (ILO, 2004b, p. 99).

⁷³ The GB paper on the *Framework*, tabled in its Committee on Sectoral and Technical Meetings and Related Issues, contains still more observations by Experts and Observers on the outcome of the discussions leading up to it (GB doc., March 2006, 295th Session, GB.295/STM/3/2(&Corr.)). For the actual text of the *Framework*, see ILO, 2006.

⁷⁴ However, the Office would have to run with it, which is an unthankful task in the age of abundance of information. Even the follow-up mechanism, which urges the GB to review periodically the progress made in the implementation of the *Framework* – a first review is scheduled for the GB's March 2008 Session – will sooner or later peter out in the absence of a special GB committee.

6. Where does the future lie?

The protection and related policy issues that have become exceedingly contentious since the early 1970s concern chiefly foreigners employed at the bottom of the skill range, i.e. those most easily exploited by unscrupulous employers or intermediaries. What is generally lacking today is decisive and sustained national political will to protect rather than international prescriptions and proscriptions. If one were to superimpose upon each other and convert into a single standard the Organisation's Conventions and Recommendations, the Office's guidelines to protect migrants in time-bound employment and those recruited by private agents, the UN's convention on migrant workers and the recent protocol to prevent, suppress and punish trafficking (the so-called Palermo protocol), migrants most in need would enjoy adequate protection, including women, illegals and trafficked persons. The only problem is – there would be very few takers and no comprehensive implementers.

Each period of world history pursues particular goals in specific ways. Protection through standard setting is not a goal of contemporary globalisation. Which migration goals, then, should the ILO pursue in the years ahead? *Improve migration statistics?* That is the UN's responsibility. *Run an information service, especially on abuses?* NGOs are much freer to do this.⁷⁵ *Provide technical cooperation?* Certainly, an international organisation should always respond to the needs expressed by its members. "Big money", however, is unlikely to be forthcoming in this area; and important impacts tend to occur only when countries change from autocratic or similar regimes to democracies or where they face emigration or immigration questions for the first time. *Network?* Networking is an activity, not a goal. Networking and alliance building is necessary and can be useful. But there are many more beckoning networks than the Office has specialised staff; and the value of alliances to the Office and its political constituency is a function of the degree to which the ILO is at the hub of the wheel rather than a fifth wheel on the wagon.

An institution is relevant and useful when it embraces an important goal or champions a current "cause". Three come to mind: (i) fighting illegal migration and employment; (ii) creating decent work to provide more domestic alternatives to poor people yearning for employment opportunities abroad; and (iii) pursuing the idea of a binding multilateral framework but pitching it at top rather than bottom skills. Illegal migration and employment are subjects where governments won't accord a significant role to global organisations unless it is a police role; and that is something the ILO should never be associated with. Creating decent work for all is the main aim of the ILO everywhere; but the emigration of low-skilled is no longer limited to a few countries and selected regions – it is a global and ubiquitous phenomenon today and is outside the effective reach of a body such as the ILO. As regards a multilateral framework of the kind envisaged by the World Commission on the Social Dimension of Globalization, it remains still-born if the implicit or explicit objective is to free the movement of unskilled or low-skilled workers from poor to rich countries. One can moralise about the contrast between free-flowing highly skilled workers and the restrictions placed on unskilled or low-skilled workers, one can theorise about the economic advantages of such a scheme, and one can underpin it with

⁷⁵ See e.g. "Migrants" under Human Rights Watch at <http://www.hrw.org/doc/?t=migrants>, and "Refugees and migrants" under Amnesty International at <http://www.amnesty.org/en/refugees-and-migrants>. The Office was at the hub of the information network on international labour migration during the inter-war period and for a while even after World War II. Its subsequent sidelining has been one of the long-term effects of the setback of 1951-52.

demographic arguments, but one cannot convince rich countries' governments – or their workers' organisations – to enter into a global agreement to that end.

More political mileage might be expected from a top-end approach – provided there is no violent reaction to globalisation in the years ahead that would entail highly protectionist policies and provided the sterility of the GATS Mode 4 model is avoided.⁷⁶ A top-end perspective would focus on the liberalisation of the movement of the highly educated or highly qualified or some such categorisation involving, for example, professionals, engineers and similar types of economically active persons, and this regardless of whether they are service providers or wage or salary earners or whatever their status might be. The easiest, but not the only, model is to specify the occupations to be liberalized, as was done for 67 categories ranging from accountants to zoologists under chapter 16 of the North American Free Trade Agreement. Migrant-receiving countries' fears of being flooded by, say, Indian engineers could be assuaged by a requirement to depart if highly qualified foreigners have no contract of regular employment within three months of entry or obtain no licence in their profession or occupation within six months of entry or some such limitations. The multilateral framework should not be a subterfuge immigration system; and countries would continue to administer their traditional entry, employment or residence laws and practices; but they ought to admit selected categories of non-nationals without quantitative limitations, queuing or prerequisites such as workplace commitments by domestic employers prior to migrants' entry. Small and medium-size developing migrant-sending countries' fears of losing their best brains could be calmed by advising them to stay outside the system, at least temporarily. Their citizens would then have to overcome the quantitative or qualitative entry hurdles that countries participating in the scheme would maintain, tighten or erect towards non-participating countries. Consequently, the freedom of movement of participating countries' citizens would have the effect of reducing somewhat the brain drain from countries not joining the system.

Such a multilateral framework could be negotiated under ILO auspices like any of the Organisation's Conventions, i.e. with the participation of employers and workers. It should then be submitted for ratification to the appropriate authorities like all Conventions, affording participants time to adjust laws and administrative practices. Acceptance should reciprocally commit all countries to the same liberalisation. A multilateral framework of this kind would not be supervised like normal Conventions but could be administered by a special body outside the ordinary ILO, though under its auspices, as is the case for the Turin Centre or the International Institute for Labour Studies. Later protocols could enlarge the scheme's scope to further categories, such as business visitors and intra-company transferees possessing documentable skills, irrespective of whether their stay is temporary, service oriented or whatever. Accession to a protocol would, of course, presuppose ratification of the basic Convention.

To have the ILO play an important role in the migration field by operating this kind of multilateral framework would require a number of preparatory studies by the Office at national, regional and global level, including on brain drain questions, followed by extensive consultations

⁷⁶ GATS Mode 4 was conceived by advanced countries as a facility for the temporary cross-border employment of contractual service suppliers, intra-corporate transferees, business visitors and the like (irrespective of the skills involved), that is, of groups in which these countries have a comparative advantage. Developing countries view it as an opportunity to move large number of low-skilled or unskilled workers across borders, for example in the construction sector, that is, of groups in which these countries have a comparative advantage. This has practically resulted in a stalemate and very little movement of any kind.

and alliance-building. This could – and should be – done without detriment to the fulfilment of the Organisation’s protection mandate in terms of supervising the application of Convention Nos. 97 and 143 and in terms of continuing the Office’s work on discrimination.

7. References

Alcock, Antony, 1971. *History of the International Labour Organisation* (London and Basingstoke: Macmillan).

Conference (International Labour Conference), various. *Record of proceedings*, no. Session (Geneva: ILO). Available as from 1998 at http://www.ilo.org/global/What_we_do/Officialmeetings/InternationalLabourConference/lang--en/index.htm.

Birks, J. S., and Sinclair, C., 1980. *International migration and development in the Arab region*, World Employment Programme (Geneva: ILO).

Blanchard, Francis, 2004. *L’Organisation internationale du travail: De la guerre froide à un nouvel ordre mondial* (Paris: Seuil).

Böhning, W. R., ed. 1981. *Black migration to South Africa*, World Employment Programme (Geneva: ILO).

Böhning, Roger, 1991. “The ILO and the new UN convention on migrant workers: The past and the future”, in *International Migration Review*, Vol. XXV, No. 4 (Winter), pp. 698-709.

Böhning, W. R., and Oishi, N., 1995. “Is international economic migration spreading?”, in *International Migration Review*, Vol. XXIX, No. 3 (Fall), pp. 794-799.

Böhning, W. R., and Schloeter, M.-L., eds., 1994. *Aid in place of migration* (Geneva: ILO World Employment Programme).

Bovenkerk, F., 1992. *Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the ground of “race” and ethnic origin* (Geneva: ILO).

Cédiey, E., et Foroni, F., 2007. *Les discriminations à raison de “l’origine” dans les embauches en France: Une enquête par tests de discrimination selon la méthode du Bureau internationale du Travail*, International Migration Papers, 85 (Genève: BIT).

Council Directive 2000/43/EC, 29 June 2000. “Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,” in *Official Journal of the European Communities*, Vol. L 180/22 (Brussels, 19.7.2000). Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:180:0022:0026:EN:PDF>.

Fauchille, Paul, 1924. “The rights of emigration and immigration”, in *International Labour Review*, Vol. IX, No. 3 (March), pp. 317-333.

Goldberg, A., Mourinho, D. and U. Kulke, 1996. *Labour market discrimination against foreign workers in Germany*, International Migration Papers 7 (Geneva: ILO). Available at <http://www.ilo.org/public/english/protection/migrant/download/imp/imp07e.pdf>.

GB, various. *Minutes*, no. Session (Geneva: ILO). Available as from June 2003 at <http://www.ilo.org/public/english/standards/relm/gb/refs/rods.htm>.

GB doc., various. *GB. no. Session/no. Agenda item/no. Document* (Geneva: ILO). Available as from November 1996 at http://www.ilo.org/global/What_we_do/Officialmeetings/gb/lang--en/index.htm.

Haas, Ernst B., 1964. *Beyond the nation state: Functionalism and international organisation* (Stanford, Ca: Stanford University Press).

Hiemenz, U., and Schatz, K. W., 1979. *Trade in place of migration: An employment-oriented study with special reference to the Federal Republic of Germany, Spain and Turkey* (Geneva: ILO).

ILO, 1997. *Protecting the most vulnerable of today's workers*, Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration (Geneva: ILO). Available at <http://www.ilo.org/public/english/protection/migrant/papers/protvul/index.htm>.

– 1999. *Migrant Workers*, General survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975 (Geneva: ILO). Available at <http://www.ilo.org/ilolex/english/surveyq.htm>.

– 2002. *Transformation and migration in Central and Eastern Europe: Final project report* (Geneva: 2002).

– 2004a. *ILO migration survey 2003: Country summaries* (Geneva: ILO).

– 2004b. *A fair globalization: Creating opportunities for all*, World Commission on the Social Dimension of Globalization (Geneva: ILO). Available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-wc.pdf>

– 2004c. *Towards a fair deal for migrant workers in the global economy*, Report VI, International Labour Conference, 92nd Session (Geneva: ILO). Available at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/meetingdocument/kd00096.pdf>

– 2006. *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva: ILO). Available at http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf.

ILR, various. *International Labour Review*, Vol., No. (Geneva: ILO, date).

Karatani, Rieko, 2005. "How history separated refugee and migrant regimes: In search of their institutional origins", in *International Journal of Refugee Law*, Vol. 17, No. 3, pp. 517-541.

Kuption, C., and Pang Eng Fong, eds., 2006. *Competing for global talent*, International Institute for Labour Studies (Geneva: ILO and Singapore Management University).

Langille, Brian A., 2003. "Re-reading the preamble to the 1919 ILO constitution in the light of recent data on FDI and worker rights", in *Columbia Journal of Transnational Law*, Vol. 42, No. 1, pp. 87-99.

– 2005. *What is international labour law for?* (Geneva: International Institute for Labour Studies).

Leitner, Matthew, n.d. The international dimension of French migrant labour policy (Geneva: unpublished PhD thesis [~1993]).

Lönnroth, Juhani, 1991. "The International Convention on the Rights of All Migrant Workers and Members of Their Families in the context of international migration policies: An analysis of ten years of negotiations", in *International Migration Review*, Vol. XXV, No. 4 (Winter), pp. 710-736.

Morse, David A., 1969. *The origin and evolution of the I.L.O. and its role in the world community* (New York: Cornell University).

Official Bulletin, various (Geneva: ILO).

Phelan, Edward, 1934a. "British preparations", in Shotwell, *op. cit.*, Vol. I, pp. 105-126.

– 1934b. "The Commission on International Labour Legislation", in Shotwell, *op. cit.*, Vol. I, pp. 127-198.

– 1934c. "The labour proposals before the peace conference", in Shotwell, *op. cit.*, Vol. I, pp. 199-220.

– n.d. *The birth of the ILO* (Typescript), two volumes.

Ricca, Sergio, 1990. *International migration in Africa: Legal and administrative aspects* (Geneva: ILO).

Riegelman, C., 1934. "War-time trade-union and socialist proposals", in Shotwell, *op. cit.*, Vol. I, pp. 55-79.

Shotwell, James T., 1934. *The origins of the International Labour Organization*, Carnegie Endowment for International Peace (New York: Columbia University Press), two volumes.

UN Population Division, 2006. *Trends in Total Migrant Stock: The 2005 Revision* at <http://esa.un.org/migration/index.asp?panel=1>.

UN Security Council doc., 1991, S/22559, Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (New York: UN, 2 May). Available at <http://www2.unog.ch/uncc/resolutio/res22559.pdf>.

Varlez, Louis, 1929. "Migration problems and the Havana conference of 1928", in *International Labour Review*, Vol. XIX, No. 1 (January), pp. 1-19.

Zegers de Beijl, Roger, ed., 2000. *Documenting discrimination against migrant workers in the labour market: A comparative study of four European countries* (Geneva: ILO).