



THIRD ITEM ON THE AGENDA

**Effect to be given to the recommendations  
of sectoral and technical meetings**

**(b) Tripartite Meeting of Experts on the ILO  
Multilateral Framework on Labour Migration  
(Geneva, 31 October-2 November 2005)**

1. The Tripartite Meeting of Experts on the ILO Multilateral Framework on Labour Migration was held in Geneva from 31 October to 2 November 2005, chaired by Mr. Francisco Arnau Navarro (Government, Spain).
2. The meeting reviewed a draft ILO Multilateral Framework on Labour Migration prepared by the Office,<sup>1</sup> and approved and adopted the full text of the amended final document on the ILO Multilateral Framework on Labour Migration.<sup>2</sup>
3. The adopted Framework document, together with the report of the meeting (*Note on the proceedings*)<sup>3</sup> accompany this document. The *Synthesis of observations submitted by experts and observers on the draft ILO Multilateral Framework on Labour Migration*<sup>4</sup> is appended.
4. *The Committee on Sectoral and Technical Meetings and Related Issues may wish to recommend that:*
  - (i) *the Governing Body take note of the report of the Tripartite Meeting of Experts;*

<sup>1</sup> TMMFLM/2005.

<sup>2</sup> TMMFLM/2005/1.

<sup>3</sup> TMMFLM/2005/2.

<sup>4</sup> TMMFLM/2005/3.

- (ii) the Governing Body approve the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration;*
- (iii) the Governing Body authorize the Director-General to publish the said ILO Multilateral Framework on Labour Migration.*

Geneva, 26 January 2006.

*Point for decision:* Paragraph 4.

## Appendix

### **Synthesis of observations submitted by experts and observers on the draft ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration adopted by the Tripartite Meeting of Experts (31 October to 2 November 2005)**

The text of the draft ILO Multilateral Framework on Labour Migration adopted by the Tripartite Meeting of Experts (document TMMFLM/2005/D.9) was circulated to the 39 tripartite experts and nine Government observers who attended the Meeting. A total of eight Government experts (Argentina, Australia, Canada, Ecuador, Japan, Mexico, and the United Kingdom) from the 19 participating Governments and one Government observer (United States), Employer experts and Worker experts submitted responses to the above communication.

This note summarizes the main issues raised in the responses.

#### **A. *General observations on the meeting and the outcome***

- The majority of Government experts had no observations on the adopted document.
- The Government expert from Argentina stated that the Framework adequately reflected the meeting discussions. The Government expert from Ecuador commended the revised Framework, and stated that the Framework would serve as a very important guide on migration, leading to a more equitable and fair treatment of migrant workers and their families. He emphasized that the document had been reviewed with appropriate attention by the Meeting of Experts as reflected in the revisions made to the principles and guidelines. The Government expert from Mexico also expressed his agreement with the revised Framework, and found it to be very good and useful.
- The Government expert from the United Kingdom generally welcomed the draft Framework and very much appreciated the work of the experts and the Office on this subject, in particular the compilation of examples of best practices. The Government expert from Australia acknowledged that the revised title with the addition of “non-binding principles and guidelines” would assist in reiterating the nature and tone of the Framework. The Government expert from Canada noted significant improvements to the original draft Framework while the Government observer from the United States referred to improvements over the original text.
- The Employer experts indicated that they were happy with the text of the Framework which was in accordance with the decisions made at the meeting.<sup>1</sup>
- The Workers’ experts stated that they did not see any reason for additional observations because the document had adequately captured the issues and concerns, debated the spirit of the discussion and the consensus that finally emerged. In their view, the revised Framework constituted a unique tool to ensure that labour migration went hand in hand with development, the promotion of decent work for all and the strengthening of social dialogue. It was a tool that governments, employers, trade

<sup>1</sup> The Employer experts had only one observation regarding guideline 5.5, as mentioned in B.4 below.

unions as well as civil society organizations could use, individually and together, to develop policies that are both socially just and economically sound. The Framework not only addressed the various legitimate concerns of labour migration in different circumstances, but it also outlined a wide range of possible policy options, based not on guesswork but on the wealth of experience that only a tripartite body, such as the ILO, could muster.

This note presents a synthesis of the major observations made on the Framework by experts, most of which had also been addressed by the Tripartite Meeting of Experts.<sup>2</sup> Section B summarizes observations on the overall framework while sections C and D refer to specific points. The note has not incorporated observations relating to differences of principles and guidelines from national law and practice, and specific suggestions for changing negotiated text.<sup>3</sup> The complete responses sent by the experts are available to GB members on request.

## **B. Observations on the overall Framework**

### **1. Some text of the Framework may sound over-prescriptive for a non-binding Multilateral Framework.**

Three Government experts (Australia, Japan and the United Kingdom) had voiced their concern that some parts of the Framework may still be perceived as over-prescriptive for what was promoted as a non-binding Framework.

- The Government expert from Australia was happy to note that many of the guidelines had been revised to take on a less prescriptive and less directive tone though a level of prescription remained in a number of areas.
- The Government expert from Japan believed that the document still included provisions which were, for all practical purposes, virtually binding.
- The Government expert from the United Kingdom referred to the amount of detail in the text which set out over 120 recommendations. The expert considered guidelines 4.6 to 4.9 to be over-prescriptive. He also raised the same concern in regard to the wording after the phrase “all stages of migration” in principle 12.<sup>4</sup>

### **2. The Framework goes beyond the agreed text of the resolution on migrant workers adopted at the International Labour Conference, 2004.**

The Government expert from Canada maintained that the Framework still went beyond the conclusions adopted by the International Labour Conference in 2004. He cited the following examples in support.

- The last three paragraphs of the Preamble (see C.1 below).
- The second sentence of principle 2 stated that governments and international organizations should promote coherence in labour migration policies at the

<sup>2</sup> The revised *Note on the proceedings* (TMMFLM/2005/2) has documented the issues debated and the agreements reached on many of these issues at the Meeting of Experts.

<sup>3</sup> Note by the Office: This is a multilateral framework and, therefore, can differ from specific national practices. The Government expert from Japan has suggested many changes to the Framework text which had been negotiated and adopted by the Meeting of Experts.

<sup>4</sup> Note by the Office: Principle 12 reads as follows: “An orderly and equitable process of labour migration should be promoted in both origin and destination countries to guide men and women migrant workers through all stages of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration.”

international level,<sup>5</sup> but there was no consensus at the 2004 Conference on it. The 2004 resolution agreed that an ILO forum may be established "... to provide a platform for increased tripartite dialogue on labour migration and increased policy coherence on this subject". In the Canadian expert's view, it was premature to conclude that such discussions would endorse promoting coherence at the international level, particularly as the concept of coherence remains undefined.

- Principle 9(b) made a reference to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, but there was no consensus in the 2004 Committee on Migrant Workers that this instrument should guide national law.

### **3. The Framework may touch on issues beyond the ILO's mandate.**

- The Government expert from Australia thought that the scope of the Framework still appeared to be too broad with respect to the ILO's mandate. In his view, there remained a level of duplication between the draft Framework and the role of other international organizations.
- The Government observer from the United States thought that the Framework continued to inappropriately address numerous issues that were beyond the scope and mandate of the ILO, including development and remittances.

### **4. Some provisions in the Framework may be misleading regarding the equality of rights between migrant workers in regular and irregular status.**

- The rights referred to in principles 8, 9, 10 and 11 and related guidelines might sometimes raise unrealistic expectations in regard to rights of migrant workers in irregular status. The Government expert from the United Kingdom has cited the references in paragraphs 4.1, 9.5, 9.9 and 11.3 to all migrant workers as examples.
- The observer from the United States mentioned that the Framework failed to acknowledge that the applicable international conventions recognized that migratory status may be a lawful basis for differential treatment. In this regard, it would be helpful if section 9 included wording to the effect that while there are human rights set out in international law and relevant treaties, which should be accorded to all migrant workers, those workers who migrate through legal channels were often entitled to additional rights that may not be granted to migrant workers in irregular status.
- Employer experts pointed out that paragraph 5.5 was not an accurate representation of the spirit of the discussion. According to them, equal treatment should be expressed only in regard to the principles of 8 and 9 of the Framework as agreed during the meeting. Guideline 5.5, however, implied an unqualified acknowledgment of equal treatment. The Employer experts suggested an alternative formulation for guideline 5.5: "... respect the principle of equal treatment as set out in principles 8 and 9 of this Framework, and that workers in temporary schemes should enjoy such rights".

### **5. The Framework is unbalanced as regards obligations and responsibilities of receiving and origin States.**

- The United States Government observer believed that the Framework highlighted receiving country obligations and responsibilities, but ignored the obligations of

<sup>5</sup> Note by the Office: The second sentence of principle 2 reads as follows: "Governments and employers' and workers' organizations should work with the ILO to promote coherence of labour migration policies at the international and regional levels based on the guidelines set out below."

source countries in protection and creating decent work.<sup>6</sup> The draft referred to international conventions as providing standards regarding rights and protections for migrant workers, but failed to take into account that obligations thereunder only flow to States parties to such instruments.

- The Government expert from Japan stated that the Framework should emphasize the necessity of preventive measures against the employment of migrant workers in irregular status, as well as the protection of migrants. For preventing irregular employment, it was essential to broadly disseminate information on the risks of irregular immigration to the public and create decent work in the countries of origin.

**6. The Framework leaves definitions, especially of different categories of migrant workers, vague.**

- The Government expert from Australia and the Government observer from the United States pointed out that the Framework did not provide definitions for the terminology used in the document such as permanent and temporary migrant workers, guest workers, migrant workers in irregular status, etc. Nevertheless the Australian expert noted that the Framework now had greater consistency in terms of what category of person is referred to.
- The Government expert from Argentina believed that the first sentence in principle 2 should refer not only to managed migration but also to “appropriate”, “optimal” or “good” management of migration.

**7. The Framework does not adequately reflect the sovereign right of all States over national labour migration policies.<sup>7</sup>**

- The Government observer from the United States thought that the draft non-binding Framework failed to adequately recognize the sovereign right of States to establish and implement their own immigration policies and inappropriately called for promoting coherence of labour migration policies at the regional and international levels.
- The Government expert from Japan mentioned that the sovereign right of all nations to determine their own migration policies should be set as a precondition to the establishment and implementation of this Framework.

**C. Observations on specific aspects of the Framework**

**1. Preamble**

- The Government expert from Canada was of the view that it was inappropriate and beyond the mandate of a meeting of experts to include a provision in the Preamble (or elsewhere in the document) stating that the Governing Body of the International Labour Office approved the Framework. He suggested that references to “the Governing Body of the International Labour Office” must be replaced by “the Tripartite Meeting of Experts” wherever it appeared.

<sup>6</sup> Note by the Office: Principles 1(a) and (b) and guidelines 1.1 and 1.2 deal with decent work in all countries. Guideline 2.3 reads as: promoting development assistance to projects and programmes generating or increasing opportunities for decent work for women and men in developing countries.

<sup>7</sup> Note by the Office: The sovereign right of States to manage their own migration policies is mentioned in the Preamble, para. 2, of the Introduction and the first sentence of principle 4, which reads as “All States have the sovereign right to develop their own policies to manage labour migration.”

- According to the Government expert from Canada, the Preamble was also inappropriate for a Framework of non-binding guidelines as it may suggest to some that the document was an instrument rather than a toolkit designed to assist member States, a view supported by the Government observer from the United States as well.
- The Government expert from Canada observed that the last three paragraphs of the Preamble went beyond the function of the non-binding Framework agreed to in the resolution of the 2004 International Labour Conference reflected in paragraph 26 of the conclusions. It was premature to conclude that the Framework was aimed at enhancing cooperation to promote coherence of international migration policies, since the prospects for such cooperation and the definition and scope of “coherence” remained subject to future processes of dialogue. Thus, the related text should be appropriately modified.

## 2. The proposed follow-up mechanism<sup>8</sup>

- The Government expert from Australia noted that the draft Framework no longer included a formal follow-up mechanism. He was supportive of the removal of an inappropriate compulsory reporting regime given that the Framework should be a non-binding “guidance” document.
- According to the Government expert from Canada, the 2004 International Labour Conference resolution did not provide for the Framework to include a follow-up mechanism. If the Framework was to contain a follow-up, it would be more appropriate for that follow-up to focus on ensuring that the information provided by the Framework was kept up-to-date, and to review the extent to which the Framework was achieving its stated purpose of assisting member States to develop effective labour migration policies. The Canadian expert suggested the following text:

The Governing Body of the International Labour Office should periodically review the progress made on the basis of this Framework in assisting member States to develop effective labour migration policy and direct the Office to ensure that it remains an up-to-date resource in support of that purpose.

- Both the Government expert from Japan and the Government observer from the United States maintained that the follow-up provisions were inappropriate for inclusion in a non-binding Framework.

### ***D. General observations on the guidelines***

- Two Government experts supported the revised guidelines in broad terms. The Government expert from Australia was happy to note that many of the guidelines had been revised to take on a less prescriptive and less directive tone. While the Canadian Government expert did not fully support all the guidelines in the Framework, given their non-binding nature and the flexibility afforded by the introductory language for each set of guidelines, he recognized that they may prove useful in assisting member

<sup>8</sup> Note by the Office: The follow-up section in the adopted Framework contains the following two paragraphs:

1. With reference to paragraph 35 of the conclusions of the general discussion on migrant workers at the 92nd Session of the International Labour Conference in 2004, the Governing Body should be urged to periodically review the progress made in the implementation of the Multilateral Framework as part of the plan of action.
2. The ILO's participation in relevant international forums should be used to promote this Multilateral Framework as a basis for partnership to achieve coherence.

States to develop future labour migration policies in different national conditions, and accordingly had no objection to them.

- The Government observer from the United States thought that the draft guidelines did not provide practical guidance based on best practices for States working to address migrant worker issues nor did they focus on those specific issues related to the protection of migrant workers' labour rights.