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THE SEVENTEENTH PLENARY SESSION OF THE GENERAL ASSEMBLY
CULTURAL, EDUCATIONAL AND SOCIAL AFFAIRS COMMITTEE

REPORT

ON

**“THE LEGAL FRAMEWORK OF THE PROTECTION OF
MIGRANT WORKERS IN THE BLACK SEA COUNTRIES AND
THE RELATIONS BETWEEN THE IMMIGRANT
COMMUNITIES AND THE HOST COUNTRY”**

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On 4 December 2000, the United Nations proclaimed 18 December to be the International Migrant's Day to recognise the contributions made by millions of migrants to the economies and well being of their host and home countries, and to promote respect for their basic human rights.

I. INTRODUCTION

1. Migration in general is a dynamic process, its trends subject to a variety of political, economic, sociological and environmental forces. Today, population movements are increasing in their scope and intensity, and the motivations behind migration are changing. International migrants belong to two broad groups: voluntary migrants and forced migrants. The Parliamentary Assembly of the Organisation of the Black Sea Economic Cooperation has already discussed some problems, related to the forced migrants, particularly "The Rights and Social Protection of Refugees and Displaced Persons in the Black Sea Region" at its 9th Plenary Session in June 1997 in Athens, as well as the "Legal framework for Combating Trafficking in People" at the 13th Plenary Session in June 1999 in Ankara. The present Report will concentrate only on the problems of the labour migration - the main type of the voluntary migration.

2. Contributions for the Report and Recommendation have been received from the national delegations of Armenia, Greece, Turkey and Ukraine. Reference materials and statistical data, received by the PABSEC International Secretariat from the International Organisation of Migration (IOM), as well as information received from other sources, mainly through the Internet, have been used in the preparation of the Report.

II. MAIN FEATURES OF INTERNATIONAL LABOUR MIGRATION

3. International labour migration came into existence many hundred years ago and underwent serious changes since then, becoming more diverse and complex social phenomena.

4. The term of "migrant worker" is defined in the European Convention on the Legal Status of Migrant Workers as "a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment".

5. International labour force migration, being one of the factors of production, influences the rate of economic growth. The labour force moves from the countries, rich with labour resources to the countries, richer with capital. More than the half of international migrants came from the developing countries, 2/3 of them are in the industrial countries.

6. International labour migration can take place because of internal and external economic reasons: inter-state differences in the level of payment for labour, growing

internationalisation of the world economy, widening gap between poor and rich countries, rapid population growth etc.

7. Following three types of international labour migration can be distinguished: **permanent migration, temporary migration and brain drain**. In the present global economic order the demand for migrant workers as cheap labour, together with restrictive or non-existent immigration policies, creates conditions for the fourth type of migration – **illegal**.

8. Migration of an individual to another country is regarded as **permanent** if the migrant has no intention of moving back to the source country during his or her life. In this case, the source country loses not only the labour services originally provided by the migrants, but also these people and their offsprings.

9. In the case of **temporary migration** workers move temporary to another country and work there with a belief there is a positive probability that they will go back to the source country in future.

10. **Brain drain** is the outflow of skilled workers. Usually, it is the case in which residents in a source country spend their earlier years on receiving education and training in their country and then migrate to another country as skilled workers. Therefore brain drain is simultaneous outflow of workers and human capital. This category includes scientific workers, engineers, physicians etc.

11. In many countries export of the working force is assisting to reduce unemployment, to ensure inflow of money receipt from abroad. On the other hand, the ebb of highly qualified working force brings to decline of the technological potential of the exporting countries, as well as their scientific and cultural level in general.

12. Many countries devise bilateral arrangements with other countries to regulate the movements of labour migrants. The destination country develops a list of needed occupations, and the source country recruits workers for these positions. In most countries, migrants are admitted as temporary workers and granted work authorisation for specific periods. Statistics on unauthorised migration are hard to find in most of the countries as such movements are clandestine.

13. Migrant workers, who mainly provide cheap, unskilled or semi-skilled labour in score of countries are perhaps the most vulnerable and unprotected category of workers. Migrants are rarely treated on a par with nationals and are in many ways at a disadvantage compared with members of host country. Some of these problems are connected with inadequate education and training, non-recognition of qualifications gained abroad etc. Immigrant minorities often suffered from an upsurge in racism and xenophobia over the last decade.

III. MAJOR REGIONAL TRENDS

14. Many migration trends in the Black Sea region reflect both the region's political and economic transformations and its growing integration with the rest of Europe. Labour migration, resulting from the difficult economic situation and widespread unemployment in most of the countries of the region, is one of the fastest growing migration flows.

15. The specific geographic location of the Black Sea region, the existence of almost transparent state borders between the CIS countries attracts a big flow of both legal and illegal immigrants, as well as transit migrants, many of which view the countries of the region as a convenient territory for further routing to the Western European states. It creates significant social-economic and other problems within the countries.

16. The most significant migration movements in the BSEC Member States often are not fully recorded, as they involve very-short-term migrants, irregular migrants, or migrants working in the informal economy.

A. Emigration Trends

17. Labour migrants, forced to leave their countries for economic reasons, are moving both within the BSEC Member States, as well as outside the region. The main destinations in the Black Sea region are Greece, the Russian Federation, Turkey, and to some extent Ukraine. The main target countries out of the BSEC region are the USA, Germany, Denmark, Netherlands etc. Below are some statistical data, provided mainly by the International Migration Organisation (IOM), on the labour emigration from the BSEC Member Countries:

- An estimated 300.000-450.000 Albanians (10%-14% of the population) left the country in early 1990s, when removal of prior exit controls coincided with the economic and political crisis. Albanians migrate mainly to Greece or Italy.
- Unofficial estimates suggest that the net emigration from Armenia between 1992-1996 was about 540.000 persons, mainly labour migrants.
- According to the official figures, presented by the Ministry of Social Welfare of Azerbaijan, there are 720.000 labour migrants in the country.
- According to the most recent Bulgarian census, approximately 500.000 of Bulgaria's 8.5 million residents have emigrated since 1990. The IOM investigation on migration potential shows that 19% of population of Bulgaria is interested in working abroad for a few years. Germany and USA are the main target countries for those wanting to work abroad. The other country, which also rates quite highly, is Greece.
- In conformity with IOM data of 1998, about 500.000-600.000 persons have left Georgia in 1990s in search of employment.
- Seasonal labour migration is one of the main migration flows in Moldova. In 1997, more than 10.000 persons were registered in Moldova as labour migrants abroad. Expert estimates suggest that more than 150.000 residents of Moldova were working abroad without registration in 1996 and 1997, and this number doubles during summer.
- In Romania there were more than 20.000 officially recorded emigrants in 1997. IOM survey shows, that there is a large migration potential from Romania, with

36% of population wanting to go to another country for a few years. Target countries for Romanians are Germany, USA, Canada, France etc.

- In 1997, 21.121 Russian citizens were registered abroad as labour migrants, which is 1.7 times more than in 1996 (12.290 persons). 71 countries imported labour from the Russian Federation, the main ones being Cyprus, Greece, Great Britain, Germany etc.
- The movement of Turkish citizens to fill in the gaps created in the labour markets of the rapidly developing Western European countries has started in early 1960's. In order to facilitate the steady flow of work force, Turkey has negotiated labour agreements with the receiving countries, thus satisfying the needs of both migrant workers and their prospective employers. The first of such labour agreements was concluded with the Federal Republic of Germany in 1961, followed by Austria, Belgium, the Netherlands in 1964 and France in 1965. The emigration of Turkish workers to Western Europe continued until 1974. From that date, Turkey began to direct its work force towards North Africa, Middle East, Gulf countries and after the collapse of the Soviet Union towards Russia and the Commonwealth of Independent States. According to the information of the Ministry of Foreign Affairs of Turkey, the great majority of Turks living abroad reside at least for a period of 10 to 15 years. Many have acquired the citizenship of the receiving countries. The latest figures show that there are around 4 million Turkish citizens living in foreign countries, 3.3 million of which are settled in the countries of European Union. Among the receiving countries Germany, with 2.3 million Turks, has the largest Turkish population.
- According to the statistics 0.5 million people left Ukraine for economic reasons to the countries outside the former USSR during 1991-1999. But the real losses of population are exceeding the statistical data. In 1999, the number of Ukrainian citizens employed legally abroad, according to official Ukrainian statistics, was 28.2 thousand persons. Main destinations for the Ukrainian labour migrants are Greece, Czech Republic, Slovakia, Cyprus, Germany and Switzerland. They are mainly engaged in seasonal agricultural works, construction and in the field of services.

A.1. Effects of Emigration

18. Recent labour emigration to some extent has had a positive impact on the migrant sending countries, resulting in growing overseas remittances. For example, a 1992 study showed that 23.3 % of total family income in Albania is derived from remittances from international migrants. In 1994 remittances from Albanian migrant workers in Greece and Italy were officially estimated at 266 million US dollars, equivalent to around 16% of GNP.

19. Incomes of the migrant workers are a material support not only for emigrants themselves, but also for their close relatives back home. The generation of foreign investment has assisted to the development of small business sector in the countries. The labour migration has eased pressure on the labour market and social services, thus helping also to diffuse social tension and maintain stability in the countries. At the same time, this form of emigration also had a negative impact on the demographic trend and contributes to the "brain drain".

B. Immigration Trends

20. Principal host countries for international migrants in the Black Sea region are Greece, Russia, Turkey and to less extend - Ukraine. Immigration flows to other countries are very small.

21. Greece, which has historically exported labour migrants, turned now into an important country of immigration. From the late 1980s onwards Greece received a massive influx of foreign immigrants, who came in search of jobs and a better life. There are as many as a half million foreigners currently living and working in the country illegally, about one-half of them are Albanians (3-6% of Greek labour force).

22. Many aliens underwent labour exploitation without even enjoying the fundamental working rights, the proper conditions of hygiene and security in their work and without having medical treatment.

23. In 1997 in the Russian Federation, there were 241.488 documented foreign labour migrants; the number of undocumented labour immigration is much higher. Large flow of temporary labour migrants is coming from the CIS countries. Most of them have no legal status. Their remittances compose an eight part of the incomes of the CIS countries. For example, according to investigations, in Armenia and Azerbaijan remittances from the labour migrants in Russia were being received by each 3-4 household. The number of irregular migrants from countries outside the CIS is estimated between 700.000-1.150.000. In recent years increase of migrantophobia is noticed in the society.

24. Until very recently, Turkey had been recognised as a sending country in terms of international migratory flows. Although Turkey does not define itself as a country of immigration, the absence of effective immigration controls have made the country vulnerable for the various types of easy entries and stays. Thousands of migrants, with the intention of temporary stay, come to Turkey from diverse countries. Today Turkey has become both a receiving and a transit country for growing number of illegal economic migrants of various nationalities en route to Europe. The total number of illegal migrants is, according to the official statistics, over 1 million. In 2000 a total number of 94.514 illegal migrants were apprehended in Turkey. Migrants live usually in the metropolitan areas of the country, such as Istanbul and Ankara.

25. According to the data of the Ministry of Labour and Social Policy of Ukraine in 1997, 2.420 foreign citizens came to work in Ukraine. As of 1 January 1998, the number of registered foreign workers in Ukraine was 1.820, of whom 328 came from the CIS, 235 from Turkey, 148 from Bulgaria, 139 from China, 124 from Vietnam, 112 from Poland, and 69 from FRY. Out of this number, 1.241 persons were hired on a regular basis, and 513 were working on a fixed-term contract.

C. National Migration Legislation

26. Greece, as an EU Member Country, is seeking to have a common immigration policy within the EU until 2002 (including one policy concerning visas, one policy for economic migrants and one policy for family reunion of migrants living in Europe) which was agreed in the Treaty of Amsterdam in 1997.

27. Since the alien's employment under the state of illegality can lead to their isolation and foster social controversies between the Greek people and minorities, the Government decided to regularise the situation of undocumented immigrants, issuing the Presidential decrees 358/1997 and 359/1997. The aim of the first Decree (358/1997) was the registration of the aliens residing in Greece illegally, who are either employed or seeking for a job, as well as beginning of the procedure which will lead to legalisation under certain conditions. The aliens who fulfilled the requirements of the above Decree were provided with the Temporary Permit Cards (white cards). Decree 389/1997 provides the terms and procedure for granting the Limited Duration Residence Cards (green cards). The aliens granted the limited Residence Card enjoy the same rights and assume the same obligations as Greek workers, relating to remuneration, working terms and conditions, social insurance and other financial obligations etc. According to the statistics of November 2000 the number of green cards, granted to immigrants was approximately 165.000, and the number of applications for them was 224.000, whereas the total number of initially registered immigrants is 378.878.

In 1997, Greece ratified the International Covenant on Civil and Political Rights.

28. Turkey will be under the obligation of its National Program for candidacy to the EU, regarding illegal migration and visa. Therefore, in coming years, visa and border control legislation and practice shall be aligned with that of the EU Shengen system. Turkey is a party to the European Convention on Human Rights, Article 8 of which covers issues concerning migrants. The European Convention on Human Rights became a part of domestic law following its ratification in 1954.

29. Since the problem of labour migration in the former socialist countries of the BSEC region, which were previously isolated from international migration flows, came into existence comparatively recently, the national legislation and the national migration policy in this field are in the stage of development yet.

30. Armenian national migration policy is determined in "The Concept of State Regulation of the Population Migration in the Republic of Armenia". The national legislation concerns the labour migrants, working on the territory of the Republic of Armenia in the labour legislation in general, as well as in the legal acts, relating to the foreign citizens. Draft laws are being elaborated "On Migration" and "On Labour Migration".

31. In Azerbaijan the law "On Special Documents for Foreign Citizens and Stateless Persons Permanently Living in the Republic of Azerbaijan was adopted in December 1997. The Ministry of Labour and Social Welfare submitted a draft provision "On Recruitment and Employment of Foreign Labour" to the Cabinet of Ministers in 1997.

32. At the legislative and institutional levels, significant progress was made in Georgia during 1997 towards the development of a national migration policy. On 19 November, a Presidential Decree was issued "On an Outline of a Migration Policy for Georgia", which, as regards to the labour migration, foresees measures to be taken to prevent irregular immigration and regulate labour migration. On the basis of this Outline, the Government, together with the IOM, developed the program "Building the

Potential for Migration Regulation” for 1998-2000. In 1997 a new draft law “On Emigration and Immigration” was prepared, and a law “On Illegal Migrations” is being developed. Labour migration legislation is being prepared with the assistance of the ILO. Georgia signed the 1950 European Convention on Human Rights, and the 1961 Convention on the Reduction of Statelessness during 1997.

33. In Moldova the labour migration is regulated by the national legislation and inter-governmental agreements on labour activities and social security of the labour migrants. The immigrants, who came for permanent or temporal residence, are given residence permit and job permit. At the legislative level, a parliamentary resolution was adopted on 8 May 1997 establishing the annual immigration quota. On 24 December 1997, a similar resolution was adopted for 1998. In accordance with the 1990 law “On Migration”, the quota is fixed at 0.5% of the county’s population. On 20 November 1997, a new regulation “On the temporary Employment of Labour Migrants” was ratified by the Parliament. On 5 December 1997, the 1990 law “On Migration” was amended with regard to permanent immigration.

34. During 1997, the Russian Government introduced new migration legislation, strengthening migration regulations and particularly further developing the system of immigration control. On 12 November 1997, the State Duma considered the first reading of the draft law “On the Recruitment and Employment of Foreign Labour”. In 1997, the Russian Federation ratified the Convention and protocol on Human Rights and Fundamental Freedoms. Thus, a significant step has been taken towards bringing the national legislation in this sphere in accordance with international standards. At the Institutional level, the Federal Migration Program constitutes the core of the state’s activity regarding migration in the RF. In 1997, regulations were developed for the territorial migration services involved in migration control, for recruitment of foreign labour in the RF and of Russian citizens employed abroad.

35. In Ukraine at the legislative level, the “Main Directions of Social Policy for the Period Until 2004” were ratified on 24 May 2000. The document determines the priorities in regulation of migration processes, including contribution to the process of repatriation, protection of social-economic interests and rights of Ukrainian migrant workers, creation of the legal and social-economic basis for regulation of the labour migration of Ukrainian citizens. State policy towards the labour migrants is being implemented on the basis of international inter-governmental agreements about mutual job placement. Foreign workers, who are employed on a legal basis, enjoy the rights and freedoms, following the Constitutional norms on equality and obligations of the citizens of Ukraine and foreigners, residing legally in the country. In 1997 the law “On Increased Sanctions for the Violation of Temporary Residence Regulations” went into force. In 1997 a draft law on immigration and a new draft of the law “on Aliens” were prepared. No special law on labour migrants is adopted yet. At the institutional level the Government of Ukraine established the Inter-Departmental Coordination Committee, with representatives of state bodies involved in migration issues. The Committee established a migration management policy and acted as a coordination point in the implementation of various programs at the national and international levels. Ukraine is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, European Social Charter (not ratified by the Supreme Rada yet).

36. Some countries of the BSEC region have signed bilateral agreements aiming to regulate migration and related matters. For example, bilateral agreements on protection of the rights of migrant workers were signed by Armenia, Azerbaijan, Georgia, Moldova and Ukraine with the Russian Federation (1994), between Armenia and Georgia (1993), Armenia and Ukraine (1995), Moldova and Ukraine etc.

IV. INTERNATIONAL LEGISLATION ON LABOUR MIGRATION

37. Human rights instruments such as the **Universal Declaration of Human Rights (1948)**, the **International Covenant on Economic, Social and Cultural Rights (1976)**, the **International Covenant on Civil and Political Rights (1976)**, the **Convention on the Elimination of All Forms of Discrimination Against Women (1981)**, the **International Convention on the Elimination of All Forms of Racial Discrimination (1969)** etc. provide many vital guarantees to all persons, including the labour migrants. They are not however specifically focused upon the situations that may be faced by migrant workers within their host countries. Thus, to fully guarantee protection of these people, other international and regional instruments have been adopted.

38. The rights of migrant workers are specifically enumerated in various international instruments. These instruments reflect an attempt by the international community to establish minimum standards for the treatment of migrant workers and their families, as it is acknowledged that these persons are often subject to discrimination and problems of integration.

39. The International Labour Organisation (ILO) has been foremost in initiating international labour standards for the benefit of migrant workers. The main ILO instruments are **the Convention concerning Migration for Employment of 1949 (No.97)**; **the Migration for Employment Recommendation of 1949 (No.86)**; **the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers of 1975 (No.143)**; **and the Recommendation concerning Migrant Workers of 1975 (No. 151)**. The Convention of 1949 focuses upon recruitment and working conditions of migrant workers and establishes the principle of equality of treatment. The Convention of 1975 is aimed at the elimination of illegal migration and illegal employment. It obliges State Parties to take all necessary measures to suppress illegal migration and to pursue the organisers of illegal movements. The 1975 Convention also furthers the principle of equality of treatment and lays down the obligation to respect the fundamental human rights of all migrant workers. The ILO has also promoted two conventions dealing with the social security entitlements of migrant workers (1962 and 1982), and has issued two recommendations pertaining to migration and developing countries (1955 and 1964).

40. Regional instruments dealing with the status of migrant workers include the **European Convention on the Legal Status of Migrant Workers of 1977**, which entered into force in 1983. The aim of this Convention is to regulate the legal situation of migrant workers who are nationals of member states of the Council of Europe, and to ensure their equal treatment with nationals of the host state.

41. The most significant achievement in recent years as regards protection of migrants' rights has been the adoption in 1990 by the General Assembly of the United Nations of the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**. The Convention is an attempt to reaffirm and establish basic human rights norms and to embody them in an instrument applicable to migrant workers and their families. It was recognised that this group of people is often in a vulnerable and unprotected position, especially given the added problems encountered from clandestine movements and trafficking in workers. Its underlying goal therefore, is to provide an instrument that protects those migrant workers and members of their families who are in an undocumented or irregular situation. Its implementation could significantly encourage basic human treatment of all labour migrants, but at present the number of countries which ratified the Convention is disappointingly small.

V. CONCLUSIONS

42. International labour migration has been an important feature of life in the XX century and will keep on being so in the next century. As this report demonstrates, labour migration continues to present challenges and opportunities for both source and destination countries.

43. Current migration flows have a number of direct and indirect political, economic and social consequences.

44. Among the most important political consequences is the need to tighten state border controls, and the resulting need for bilateral or multilateral international cooperation in the field of migration.

45. The economic effects are multifarious both in macro- and micro-economic terms. The most important macroeconomic aspect seems to be the modification in many countries, through the migration process, of the structural tensions and disturbances brought about by the drive towards a free market economy. For instance, migration of persons helps reduce imbalances in labour markets. On the other hand illegal temporary workers decrease the number of posts available on the labour market. An important micro-economic effect is that migration generates a considerable proportion of incomes of households in home countries.

46. Although, the short-term aspect of migration are satisfactory and attractive for the sending countries, the long term effects are negative from the point of view of economic development of the countries, from which the migrants came.

47. Many labour migrants today face situations where protection of their human rights is minimal or absent. Migrant's rights are closely linked with the concept of human rights, democracy and pluralism, because the way immigrants are incorporated into the social and political life of the countries they live is a major measurement of the understanding of democracy, pluralism and human rights.

48. Existing universal and regional instruments of human rights and rights of migrant workers provide adequate standards for protection of rights and dignity of labour migrants, if they are implemented.

49. The experience of the States of the region to date proves, regrettably, that they are often unable to keep pace with changing realities of migration. Governments and Parliaments of both sending and receiving countries must assume responsibilities towards the labour migrants and uphold their rights. Adjustment of legislation to a dynamically changing migration situation, as well as its harmonisation with the European standards is an important task still to be carried out.

