



**International Convention
on the Protection of the
Rights of All Migrant
Workers and Members
of Their Families**

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COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES

Second session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 25 April 2005, at 10 a.m.

Chairperson: Mr. KARIYAWASAM

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The meeting was called to order at 10.20 a.m.

OPENING OF THE SESSION (item 1 of the provisional agenda)

1. The CHAIRPERSON declared open the 10th meeting of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.
2. Ms. IZE-CHARRIN (Representative of the Secretary-General) said that the Chairperson had addressed the Commission on Human Rights at its sixty-first session not only as Chairperson of the Committee but also as Chairperson of the meeting of chairpersons of the human rights treaty bodies. He had made it clear that the Committee was taking its task seriously and seeking to address the major challenge of broadening participation in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
3. Since the first session of the Committee, Chile, the Libyan Arab Jamahiriya and Turkey had become States parties to the Convention, and Argentina, Cambodia, Gabon, Indonesia, Lesotho, Liberia, Peru and Serbia and Montenegro had become signatories. Moreover, Algeria had acceded to the Convention the previous week, bringing the total number of States parties to 29. As a further 16 States had signed but not yet ratified the Convention, more ratifications could soon be expected. She had been informed that the accession process was under way in Kenya.
4. In June 2004, the International Labour Conference had adopted a tripartite plan of action on migrant workers and decided to develop a non-binding multilateral framework for a rights-based approach to labour migration. In December 2004, the Berne Initiative, an inter-State consultative process promoted by the Swiss Government, had presented an international agenda for migration management reflecting common undertakings among participating States and effective practices for a planned, balanced and comprehensive approach to the management of migration. The Global Commission on International Migration would hold its last regional hearing in Mexico City in May 2005 and would finalize its report later in the year. Moreover, the United Nations General Assembly would hold a high-level dialogue on international migration and development in 2006.
5. As such developments created an environment that would influence stakeholders in their position on the Convention and the Committee, she was pleased to note that the Committee had reserved time in its programme for an exchange of views with representatives of States parties, intergovernmental organizations, United Nations agencies and NGOs.
6. At the current session, the Committee would formally adopt the reporting guidelines that it had discussed at its informal meeting in October 2004 and would discuss working methods for the consideration of initial reports of States parties. It was to be hoped that the Committee would soon start receiving reports and take up its core monitoring function, thereby strengthening the position of the Convention within the United Nations treaty system. The Office of the United Nations High Commissioner for Human Rights (OHCHR) offered the Committee its full support and would gladly advise States parties on their reporting obligations and help in any way it could to ensure that reports were submitted as soon as possible.

7. She confirmed that the Rapporteur on the harmonization of reporting guidelines for treaty bodies, Mr. Kamel Filali, would meet with the Committee the following day for an exchange of views on the draft guidelines on an expanded core document and treaty-specific targeted reports, a subject in which a number of States, including some that were parties to the Convention, had shown a strong interest.

8. The CHAIRPERSON expressed his appreciation of OHCHR support for the Committee, especially its assistance in organizing the informal session held in October 2004, at which the members had developed a clearer and more focused concept of their mandate. The current session would concentrate on procedures for examining country reports, the first of which would probably be submitted for consideration at the next session.

9. In addition to addressing the Commission on Human Rights, he had attended a parallel event involving an interactive dialogue on migration with national human rights institutions from countries of origin and receiving countries. He had presented the Committee's perception of the Convention, its work and its advocacy role.

10. When presenting his credentials to the United Nations Secretary-General in his capacity as Permanent Representative of Sri Lanka to the United Nations, he had expressed concern that the reform document entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005) made no mention of the important issue of migrants. The Committee would have an opportunity to discuss the matter with the United Nations High Commissioner for Human Rights later in the session.

ADOPTION OF THE AGENDA (item 2 of the provisional agenda) (CMW/C/2005/1)

11. The agenda was adopted.

ADOPTION OF THE PROVISIONAL GUIDELINES REGARDING THE FORM AND CONTENTS OF INITIAL REPORTS TO BE SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLE 73 OF THE CONVENTION (agenda item 4) (CMW/C/2004/L.4)

12. The CHAIRPERSON drew attention to the provisional guidelines contained in annex I to document CMW/C/2004/L.4, which had been endorsed at the informal session and transmitted to States parties. He took it that the Committee wished to adopt the provisional guidelines formally.

13. It was so decided.

ADOPTION OF AMENDMENTS TO THE PROVISIONAL RULES OF PROCEDURE (agenda item 5) (A/59/48; CMW/C/2004/L.4)

14. The CHAIRPERSON drew attention to the draft amendment to the Committee's provisional rules of procedure (A/59/48, annex IV) contained in document CMW/C/2004/L.4. The amendment concerned the provision of the Committee with summary records of its proceedings and was in line with the practice followed by other treaty bodies, bearing in mind budgetary constraints. The Committee had already discussed the draft amendment at its informal meeting.

15. Ms. EDELENBOS (Secretary of the Committee) said that the secretariat suggested omitting the reference to the languages - English, French and Spanish - in which the records were to be made available to Committee members because no funds were currently available for translation.

16. Mr. GAKWANDI said that he agreed with that suggestion, since future members of the Committee might speak other official United Nations languages. If the issue was left open, there would be some scope for change.

17. Ms. CUBIAS MEDINA said that she had no objection to deleting the reference to the languages in which the records were to be provided, but it was imperative that all basic documents used by the Committee should be available in the languages of the members of the Committee.

18. Mr. ALBA said that the Committee's primary concern should be to ensure that summary records were available to its members; language-related issues were of secondary importance. Bearing in mind budgetary constraints, it would be reasonable to delete the reference to English, French and Spanish.

19. Mr. EL-BORAI said that he opposed deleting the reference. It was essential for Committee members to be able to consult the summary records in their respective working languages, if not in their mother tongue.

20. Mr. CARRIÓN-MENA said that he shared Mr. El-Borai's concerns. He wished to know whether the rules regarding the translation of summary records also applied to other treaty bodies. Any unequal treatment risked undermining the status of the Committee with regard to other treaty bodies. The issue of international migration was of increasing global significance and it would be unwise to relegate the Committee to a secondary position by limiting the services provided to it.

21. The CHAIRPERSON said that he, too, was of the view that equal treatment should be afforded to all treaty bodies and that reaffirming the Committee's status was crucial to its effectiveness.

22. Ms. EDELENBOS (Secretary of the Committee) said that the rules regarding the translation of summary records applied to all treaty bodies. Summary records were provided in either English or French, the Committee's report to the General Assembly was made available in all the official United Nations languages, and working documents were translated into the languages of the Committee. As a rule, summary records were sent to the Committee for approval prior to translation. However, should the Committee wish to discuss a particular summary record at a meeting, an advance copy of that record could be provided to enable the Committee to discuss possible corrections while in session. In exceptional circumstances, translations of summary records could be provided, if deemed indispensable to the Committee's proceedings. For example, summary records of meetings with Spanish-speaking States parties could be translated into Spanish on request.

23. The CHAIRPERSON said that, in light of the Secretary's explanation, he took it that the Committee members wished to retain the reference in the amendment to English, French and Spanish.

24. It was so decided.

25. The amendment to the provisional rules of procedure, as contained in document CMW/C/2004/L.4, was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3)

26. The CHAIRPERSON drew attention to the draft programme of work and some minor amendments to it.

27. The draft programme of work, as amended, was adopted.

28. The CHAIRPERSON said that he had communicated to the Secretary-General the Committee's concern that the range of States parties to the Convention was not broader, which might undermine its effectiveness. Consultations with regional actors had revealed widespread concern over the failure of destination countries to sign and ratify the Convention, although the recent accession of the Libyan Arab Jamahiriya as a major labour-receiving country was encouraging in that regard.

29. He then invited Mr. Alba to provide Committee members with information on the work of the Global Commission on International Migration, of which Mr. Alba was a member.

30. Mr. ALBA recalled that the Global Commission on International Migration was an independent body consisting of 20 members who did not necessarily represent their Governments. It was to present a report to the core group of some 25 countries supporting the initiative and to the United Nations Secretary-General. Formal positions had not yet been adopted but the Commission was currently holding regional hearings, each of which included at least one full day of plenary meetings to discuss progress towards the final report. The two hearings it had held to date had addressed the issues of east-west migration across Europe and migration within Africa, and at the next hearing, to be held in Mexico in May 2005, an initial draft of the report would be presented.

31. Every effort was made to create an atmosphere of trust at the hearings, in order to encourage a frank exchange of views, not only on the problems raised by migration but also on concrete proposals and best practices in migration management. A questionnaire was usually distributed beforehand to help participants prepare for the meeting, although its purpose was not to seek specific answers and the preparation of formal reports was discouraged.

32. Participants at the hearings divided into three panels - government representatives, regional experts and academics, and representatives of civil society - to discuss four topics: the economic aspects of migration; regular versus irregular migration; the social and cultural implications of migration, including integration, assimilation, repatriation and return; and the regulation of migration.

33. One of the most keenly-debated topics was the question of the position the Global Commission should adopt on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The fact that only a relatively small number of States had ratified the Convention was a significant concern, and one that tended to be exploited by some of those countries that were not in favour of the Convention, even though there were other instruments that had similar levels of ratification, including certain International Labour Organization (ILO) conventions, which also protected workers' rights.

34. The Global Commission was somewhat divided on the issue. Many members claimed that it was the Convention's failure to make a clear distinction between the rights of migrant workers in regular situations and the rights of those in irregular situations that explained the low number of ratifications. There was also a widespread view that, where Governments had ratified more general instruments which protected everyone's rights, regardless of their migration status, there was no real need for them to ratify the Convention.

35. Another area of debate was the best approach to adopt to migration: a rights-based approach or some other approach.

36. The CHAIRPERSON said some countries were already under an obligation to apply the provisions of the Convention by virtue of the fact that they were parties to other international human rights instruments containing rights that also applied to migrant workers. Unfortunately, by not acceding to the Convention, a country might give the impression of discriminating against migrant workers or of failing to comply with its existing commitments.

37. He also pointed out that the Convention focused on migrant workers as human beings, whereas many countries were increasingly treating them as a law-and-order problem. Clearly, visa and other regimes were necessary, but the Committee needed to make clear that the only way to ensure that migrant workers were treated with dignity and as human beings was for States to adopt the Convention.

38. Mr. CARRIÓN-MENA wondered how the Global Commission was funded and where its membership was drawn from, since its composition might affect its position on the Convention. He trusted it would emphatically recommend accession to the Convention as a rights-based approach to migration.

39. Ms. CUBIAS MEDINA said that in fact the Convention did distinguish between the rights of documented migrant workers and those of undocumented migrant workers. What was so difficult for some to accept was precisely that undocumented migrant workers were recognized as having rights. Yet no human rights-based instrument could leave out a whole sector of a given population.

40. The argument that a country was already a signatory to other instruments that provided universal protection was not new: it had earlier been raised in connection with the Convention on the Elimination of All Forms of Discrimination against Women. The important point was the degree of vulnerability of a given sector. Parties to other instruments who wished to demonstrate their concern for what was a highly vulnerable group had every reason to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, particularly when the issue of people-trafficking was taken into account.

41. The Committee must make every effort to explain to States exactly why a rights-based approach was so important and why they should put aside the issue of documented and undocumented migrants. As the Special Rapporteur on the human rights of migrants had pointed out, it was possible to manage migration and still respect human rights.

42. Mr. GAKWANDI said the argument that certain rights were already covered and that it was therefore not necessary to sign the Convention was disingenuous. The International Bill of Human Rights already covered all human beings, so by that argument the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women would not exist, since racial and sexual discrimination were already prohibited. The fact was that, whenever a vulnerable group had been identified, a special mechanism had been developed to protect it, as with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

43. Certain aspects of migration went beyond human rights. There was an ethical dimension to the impact of migration on societies, for example, that was illustrated by the case of certain developing countries in southern Africa, which found their health services on the verge of collapse as their highly trained staff were lured away by the salaries offered by recruiters in developed countries which did not themselves invest in such training.

44. He wondered whether the Global Commission might in fact endorse the Convention as the only rights-based multilateral framework for migrant workers, and not as an alternative, but as a complement to other frameworks to which States might be parties. He also wondered whether it might be more desirable for the Committee to make a special submission to the next regional hearing of the Global Commission or to send the Commission a copy of its report and request it to take it into account when making its final recommendations.

45. Mr. BRILLANTES said that the non-endorsement of the Convention in the final report of the Global Commission on International Migration would have disastrous consequences for the Convention and the work of the Committee, since any State not wishing to ratify the Convention could use the report to substantiate its arguments. As the members of the Global Commission had been appointed on the basis of their individual expertise on the subject of migration, the consequences for the Convention would be particularly serious if they did not endorse it. He was curious to know how many of the States represented in the Commission had signed and ratified the Convention.

46. Mr. EL-BORAI said he would like to know what the Global Commission's stance was on clandestine migration.

47. Mr. EL JAMRI said that since the adoption of the Convention, the United Nations did not seem to have made any great efforts to promote its ratification. The Global Commission should stress the importance of the role of the United Nations in promoting ratification. Many developed countries considered that migrants enjoyed sufficient rights on their territory, and that ratification of the Convention was therefore unnecessary. Some of those countries wished to avoid being obliged to provide further rights to their migrant populations. Developing countries often had difficulty guaranteeing the rights of all their own citizens, which made guaranteeing

the rights of migrants particularly problematic. Moreover, some of the countries that had ratified the Convention were not implementing its provisions effectively and must be encouraged to do so.

48. The role of civil society in promoting the ratification of the Convention should be stressed. A forum had recently been held in Luxembourg for European Union and Mediterranean NGOs from 35 countries. The forum had included a workshop to raise awareness of the Convention among those NGOs and the European Commission representatives present. It had also established a Mediterranean network on migration issues, which would, inter alia, promote the rights of migrant workers.

49. The CHAIRPERSON said that it was important to note that the Convention was the result of 10 years of negotiations and that it had been adopted by consensus. The text had received the support of all States members of the United Nations, and any State that expressed concerns about ratifying the Convention on the grounds that its content was in some way deficient was showing evidence of duplicity.

50. Mr. ALBA explained that the Global Commission was funded by a core group of 25 countries, but that a significant proportion of the funds came from Switzerland and Sweden, which jointly chaired the Commission. Regarding membership, the Global Commission's Internet site provided detailed information on all members, which included Mrs. Mary Robinson, the former United Nations High Commissioner for Human Rights, former heads of the United Nations Population Fund, the World Trade Organization, the Labour Secretary of the Philippines, an American archbishop and individuals from several other countries including Australia, Brazil, Egypt, Morocco and the Russian Federation. Although the members had been appointed in their personal capacities, they were, to a certain extent, considered spokespersons for their countries.

51. The Global Commission was trying to find ways of striking a balance between the different aspects of migration issues. Economic factors, for example, affected human rights, and must therefore be taken into consideration. Labour supply and demand were a fact of life in contemporary society. Many concerns had been expressed, particularly by African countries, about the "brain drain". On the issue of ratification of the Convention, he said that the Global Commission was trying to find a pragmatic and realistic way of reconciling the argument that migrants' rights were covered by other international human rights instruments, and the counter-argument that migrant workers were a vulnerable group that required specific protection. The Global Commission could not ignore law-and-order issues or security issues, as they were of fundamental importance to contemporary society, particularly since the events of 11 September 2001.

52. The Commission's position on illegal migration had not yet been finalized, since it was a particularly complex issue. Many developing countries faced the dilemma that migrants were calling for better guarantees of rights that could not even be guaranteed to the local population. The European Commission had recently adopted a green paper that endorsed a more open stance on migration within the European Union. As a result, there had been calls for the European Union to support the Convention, from which it had to some extent been distancing itself.

53. Ms. DIEGUEZ said that she had recently heard a representative of Finland state that his country did not have any problems with migrants on its territory. On the contrary, the influx of migrants was insufficient to meet the country's labour needs, and the Finnish Government's main cause for concern was the ageing national population.

54. Mr. ALBA said he believed that it would be useful if either the Committee as a whole, or the Chairperson, were to send a brief communication to the Global Commission underlining the importance of the Commission's endorsement of the Convention. On receipt of such a communication, the Commission would be able to refer to the Convention and the Committee in its final report, which would be a useful means of raising general awareness.

55. The CHAIRPERSON said that the contents of such a communication could be discussed further at an informal meeting.

56. He reminded the Committee that at its next session it would be discussing specific issues with a view to drafting general comments. Government representatives and NGOs would be involved in the Committee's thematic discussions. Specific subjects that were already emerging included the promotion of the Convention, the use of the Convention as a tool for enhancing development and the administrative detention of migrants. He invited all members to reflect further on other possible subjects.

The meeting rose at 1 p.m.