

Opinion of the European Economic and Social Committee on the 'International Convention on Migrants'

(2004/C 302/12)

On 29 January 2004 the European Economic and Social Committee decided, under Article 29(2) of its Rules of Procedure, to draw up an opinion on the 'International Convention on Migrants'.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 14 June 2004. The rapporteur was Mr Pariza Castaños.

At its 410th plenary session (meeting of 30 June 2004), the European Economic and Social Committee adopted the following opinion by 162 votes to three with 11 abstentions.

1. Introduction

1.1 The convention was adopted by the General Assembly of the United Nations in its resolution No. 45/158 of 18 December 1990. It entered into force on 1 July 2003 following ratification by the first 20 states. Thus far, 25 states have ratified the convention ⁽¹⁾. As such, it is a fully enforceable international treaty that must be upheld by the states' parties.

1.2 The aim of the convention is to protect the human rights and dignity of people across the globe who emigrate for economic or employment-related reasons by means of appropriate legislation and good national practice. The common basis for such international legislation on migratory policies should be the promotion of democracy and human rights. The Convention also safeguards the balance between the different situations in both countries of origin and host countries.

1.3 This convention is one of seven international United Nations treaties governing human rights. It recognises that certain basic human rights, as defined in the Universal Declaration of Human Rights, must be guaranteed internationally for all migrant workers and their families. It codifies in a comprehensive and universal manner the rights of migrant workers and their families on the basis of the principle of equality of treatment. It sets out those rights that must be granted to immigrants who are in a regular and an irregular situation, setting down minimum standards of protection in terms of civil, economic, political, social and employment rights and recognising that migrant workers must have fundamental rights that are safeguarded in international rules.

1.4 This convention further develops previous conventions of the ILO ⁽²⁾ by extending the legal framework to all immigration worldwide, promoting just treatment for immigrants and striving to prevent exploitation of irregular immigrants. It looks

at the migration process as a whole from education, selection, departure, transit and residence in the country of employment to return to and re-establishment in the country of origin.

1.5 The individual states are responsible for managing migratory flows. The EESC supports the view of the Secretary-General of the United Nations and advocates better bilateral, regional and international cooperation between countries of origin and host countries. The convention neither promotes nor manages migratory flows, rather aims only to guarantee the universal recognition of basic human rights and reinforce the protection thereof worldwide.

1.6 The convention considers the possible administrative situations of migrants in different ways: it guarantees for all individuals the protection of their basic human rights, applying further-reaching rights to legal immigrants.

1.7 Through this convention, the international community and the United Nations have reasserted their desire to improve cooperation between states so as to prevent and indeed eradicate the trafficking and clandestine employment of immigrants who are in an irregular situation as well as to extend the protection of the basic human rights of immigrants to the entire world ⁽³⁾.

2. Immigrants' rights

2.1 The convention aims to guarantee equal treatment and the same legal conditions for immigrant workers as for national workers. This implies:

- preventing inhuman living and working conditions, physical and sexual abuse and degrading treatment including slavery (Articles 10, 11, 25, 54);

⁽¹⁾ Azerbaijan, Belize, Bolivia, Bosnia-Herzegovina, Burkina Faso, Cape Verde, Colombia, East Timor, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Krygyzstan, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda, Uruguay.

⁽²⁾ Convention No. 97 of 1949 and Convention No. 143 of 1975.

⁽³⁾ According to the International Organisation for Migration, 175 million people currently live in a country other than their country of birth or nationality.

- guaranteeing the rights of immigrants to freedom of thought, expression and religion (Articles 12, 13);
- recognising the rights of immigrants to privacy and personal security (Articles 14, 15, 16);
- establishing access to effective legal assistance through fair legal proceedings that guarantee the right to equality before the law and the right to non-discrimination and during which appropriate legal procedures are applied to the immigrant workers and interpreting services are provided (Articles 18, 19, 20);
- guaranteeing access for immigrants to information on their rights (Articles 33, 37);
- guaranteeing equal access to education and social services for all immigrants (Articles 27, 28, 30, 43 to 45, 54);
- recognising the right of immigrants to join and participate in trade unions (Articles 26, 40).

2.2 The convention also stipulates that immigrants must have the right to maintain ties with their country of origin. This implies:

- ensuring that immigrants are able to return to their country of origin should they wish and permitting them to make occasional visits and maintain cultural links (Articles 8, 31, 38);
- guaranteeing the political participation of immigrants in their country of origin (Articles 41, 42);
- safeguarding the right of immigrants to transfer income to their country of origin (Articles 32, 46, 48).

2.3 The convention is based on the fundamental principle of ensuring a minimum level of protection for all immigrants. It considers the two possible situations in which immigrant workers can find themselves (regular and irregular), setting out a series of further-reaching rights for legal immigrants and recognising some basic rights for irregular immigrants.

2.4 The convention proposes that initiatives be undertaken to eradicate illegal immigration, principally by eliminating the misleading information used to entice people into irregular immigration and by imposing sanctions on traffickers and employers of non-documented immigrants.

2.5 It establishes a Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, consisting of ten experts to be appointed by the states parties and who will oversee the application of the convention.

3. The countries of the west have still not ratified the convention

3.1 International immigration is a consequence of the major economic and social inequality between the rich countries of the north and the developing countries. This inequality is deepening in the increasingly globalised economic system of today. And yet, the majority of those countries that have thus far ratified the convention are countries of origin of immigrants. The Member States of the European Union, the United States of America, Canada, Australia, Japan and the remaining countries of the western world, who play host to a great many immigrants⁽¹⁾, have as yet neither ratified nor signed⁽²⁾ the convention.

3.2 The European Union, which is keen to establish international rules in a host of areas (in international trade within the WTO, in the environment through Kyoto, and so on), must also ensure that the basic rights of immigrants are guaranteed via such international norms.

4. Immigration policy within the European Union

4.1 The European Union is an area in which human rights are upheld and protected and most of the international legal instruments of the United Nations are applied. The European Union also has its own instruments in this area, such as the European Convention on Human Rights and the Charter of Fundamental Rights.

4.2 The European Union has also developed a series of legal instruments to counter discrimination⁽³⁾. Despite this, various experts, including the European Monitoring Centre on Racism and Xenophobia⁽⁴⁾, have reported discrimination suffered by migrants in terms of their working conditions.

⁽¹⁾ 55 % of the world's immigrants live in North America and western Europe.

⁽²⁾ The signatory states are states that have indicated their desire to join the convention in the future, such as Chile, Bangladesh, Turkey, Comoros, Guinea-Bissau, Paraguay, São Tomé and Príncipe, Sierra Leone, and Togo.

⁽³⁾ Directive 2000/43 and Directive 2000/78.

⁽⁴⁾ Directive 2000/43 and Directive 2000/78.

4.3 Since the European Council of Tampere, the European Union has been in the process of drafting common legislation governing asylum and immigration. Tampere laid down a sound political basis enabling the Union to harmonise its immigration and asylum legislation and improve cooperation with third countries in order to better manage migratory flows. Furthermore, in Tampere consensus was reached as to the need to guarantee fair treatment for all individuals and develop policies to promote integration and prevent discrimination.

4.4 The Commission has drawn up numerous legislative proposals which have, however, met with considerable resistance within the Council⁽¹⁾. Four years on, the results are meagre: the legislation that has been adopted is disappointing and has moved away considerably from the Tampere objectives, the proposals of the Commission, the opinion of the Parliament and the stance of the EESC. The current system used within the Council to adopt agreements allows proposals to be blocked. This, coupled with the attitudes of some governments, makes it very difficult to achieve consensus.

4.5 The European Economic and Social Committee has called upon the Council through a series of opinions to act with greater responsibility and adopt a more constructive approach based on enhanced cooperation. It is becoming increasingly necessary for the European Union to have adequate common legislation enabling it to manage immigration in a legal and transparent manner.

4.6 The EESC has drafted several opinions⁽²⁾ in which it urges the European Union to adopt a policy that will ensure that economic immigration is processed through the right legal channels, irregular immigration is prevented and illegal trafficking of people is stopped.

4.7 In the light of the above, the approval of the Directive on the conditions for entry, residence, and access to employment of immigrants, which is based on the Commission proposal⁽³⁾ and takes account of the opinion of the EESC⁽⁴⁾, is now a matter of urgency.

4.8 The Thessaloniki European Council welcomed the Commission's Communication on immigration, integration and employment⁽⁵⁾, in which it projects that labour migration into the European Union will increase considerably over the coming years and that appropriate legislation will therefore be required enabling immigration to be managed within a legal framework. The Commission also states that integration policies focusing on the migrant population and endeavouring to eliminate all forms of exploitation and discrimination will be needed.

⁽¹⁾ As far back as 1994 the Commission, in its White Paper on European social policy (COM(1994) 333 final), recommended that the Member States ratify the convention.

⁽²⁾ See the EESC opinions on family reunification, OJ C 204 of 18.7.2000 and OJ C 241 of 7.10.2002; on the Communication from the Commission on a Community immigration policy, OJ C 260 of 17.9.2001; on the status of long-term residents, OJ C 36 of 8.2.2002; on the conditions for entry and residence for the purpose of paid employment, OJ C 80 of 3.4.2002; on a common policy on illegal immigration, OJ C 149 of 21.6.2002; on the conditions of entry and residence for purposes of studies, vocational training or voluntary service, OJ C 133 of 6.6.2003; and on access to European Union citizenship, OJ C 208 of 3.9.2003.

⁽³⁾ Cf. OJ C 332 of 27.11.2001.

⁽⁴⁾ Opinion of the EESC in OJ C 80 of 3.4.2002 (rapporteur Mr Pariza Castaños).

⁽⁵⁾ Communication from the Commission COM(2003) 336 final and opinion of the EESC in OJ C 80 of 30.03.2004 (rapporteur Mr Pariza Castaños).

4.9 Some national legislation on immigration does not fully tally with the applicable international conventions on human rights, and some European Directives (on family reunification for example) are even considered by various NGOs and by the European Parliament to run contrary to basic human rights. The EESC believes that the existing international conventions on human rights as well as the EU Charter of Fundamental Rights should be the basis for the entire European legislative structure in terms of immigration.

5. The global values of the European Union

5.1 Of late, the United States has been developing a unilateral approach to governance of international affairs. The entire system of the United Nations faces serious problems as a result of this situation. As a result the only system that currently exists within which to seek out multilateral solutions to international conflicts based on cooperation is in danger.

5.2 The European Union is, albeit with great difficulty, drawing up its own common foreign policy within which the United Nations will play an essential role. The future Constitutional Treaty will consolidate this external policy mandate as one of the Community's tasks.

5.3 The European Union's external relations are based on multilateralism and active compromise within the United Nations. In a recent document⁽⁶⁾ the European Commission asserted that: "The challenge currently facing the UN is clear: "global governance" will remain weak if multilateral institutions are unable to ensure effective implementation of their decisions and norms – whether in the 'high politics' sphere of international peace and security, or in the practical implementation of commitments made at recent UN conferences in the social, economic and environmental fields. The EU has a particular responsibility in this regard. On the one hand, it has made multilateralism a constant principle of its external relations. On the other, it could and should serve as a model to others in implementing – and even going beyond – its international commitments".

5.4 Globalisation is generating new opportunities and new problems for global governance⁽⁷⁾. At present, migration entails major problems both for the migrants themselves and for the countries of origin and host countries. The challenge we face is to transform these problems into opportunities for everyone, for migrants, for countries of origin and for host countries. Multilateralism and international cooperation are the route to good global governance, to a system of rules and institutions established by the international community and universally recognised.

⁽⁶⁾ COM(526) 2003, 'The European Union and the United Nations: The choice of multilateralism'.

⁽⁷⁾ 'Coping with globalisation – the only option for the most vulnerable'.

5.5 As Kofi Annan, Secretary-General of the United Nations, said at the European Parliament on 29 January 2004, international cooperation is the best approach to managing the rising international migration of the coming years. 'Only through cooperation – bilateral, region, and global – can we build the partnerships between receiver and sender countries that are in the interests of both; explore innovations to make migration a driver of development; fight smugglers and traffickers effectively; and agree on common standards for the treatment of immigrants and the management of migration'

5.6 Europe is an area of freedom, democracy and respect for the human rights of all people. In order to strengthen these values in the future, all the Member States of the EU must ratify the international conventions that protect these basic human rights and their legal precepts must be incorporated into both Community and national legislation.

5.7 Article 7 of the draft Constitution for Europe advocates the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The EESC supports this. The EESC also backs the inclusion into the Constitution of the Charter of Fundamental Rights of the Union, which will create a common basis for the rights of all people inside the Union.

5.8 These values must also become an integral part of the Union's international relations. Europe must promote the creation of a common judicial body for the worldwide protection

of the basic rights of all people, irrespective of national origin and place of residence, on the basis of the international conventions drawn up by the United Nations.

6. EESC proposal

6.1 In line with the opinions it has drawn up on European immigration policy and in support of the opinion of the European Parliament, the European Economic and Social Committee would encourage the Member States of the European Union to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was approved by the General Assembly of the United Nations in resolution No. 45/158 of 18 December 1990, and which entered into force on 1 July 2003.

6.2 The EESC calls upon the President of the Commission and the current Presidency of the Council to undertake the necessary political initiatives to ensure that the Member States ratify this convention within the coming 24 months and that the EU also ratify the convention when the Constitutional Treaty authorises it to sign international agreements. To facilitate ratification, the Commission should carry out a study analysing national and Community legislation relating to the convention. Furthermore, the social partners and other civil society organisations will join with the EESC and the Commission in promoting ratification.

Brussels, 30 June 2004.

The President
of the European Economic and Social Committee
Roger BRIESCH
