Filling the Gap of Social Security for Migrant Workers: ILO's Strategy

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I) Introduction

Social security is of utmost importance for the well-being of workers, their families and communities as a whole. It is a basic human right and a fundamental means for the creation of social cohesion, thereby contributing to social peace and social inclusion. In addition, social security is an indispensable part of government social policy and an important tool for the prevention and alleviation of poverty. By the same token, it can, through national solidarity and fair burden sharing, contribute to human dignity, equity and social justice. It is also an important factor in political inclusion, empowerment and the development of democracy. Studies have shown that social security, if properly managed, enhances productivity by providing health care, income security and social services. In conjunction with a growing economy and active labour market policies, it can be an important instrument for sustainable social and economic development. In light of these remarks, it may be argued that the expansion of globalisation and structural adjustment policies over the last decades has made social security more necessary than ever.[2]

In addition, the necessity of ensuring social security protection to migrant workers specifically has become increasingly important in the light of the new models of economic integration, which have emerged in several parts of the world over the last decades. The portability of social security rights undoubtedly facilitates the free movement of labour within economic zones and thus contributes to guaranteeing the proper functioning of these integrated labour markets. Also, the fact that social security benefits can form an important part of the

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[2] See: *Conclusions concerning social security*, International Labour Conference, 89th Session, 2001

remittances which are sent to migrant workers' countries of origin and which have been recognised by the world community as significant tools for development, emphasises the significance of social security rights for migrant workers from an economic perspective.

Social security is usually established by national legislation and is related to periods of employment or contributions or residence. Hence, the amounts and range of benefits, conditions of entitlement and the duration of payment within social security schemes are set out by national legislation. These schemes are administered by national bodies and governed by national rules and regulations. National courts and tribunals resolve individual disputes relating to benefit entitlement. The scope of social security schemes is therefore traditionally confined to the territory of a particular state.

Due to the territorial nature of social security and the diversity of the systems in terms of programmes and their conditions to the entitlement to benefits, specific difficulties relating to social security protection may arise when workers migrate from one country to another. While migrant workers run the risk of losing entitlements to social security benefits in their country of origin because of their absence, they may at the same time, in their country of employment, encounter exclusion from social security coverage as non-nationals or a denial of any right to benefits due to lengthy qualifying periods. The more a worker moves from one country of employment to another, the more he/she becomes vulnerable in this respect. While the personal situation and experience of these workers may vary substantially one to another, there are specific means by which these difficulties can be overcome. These means are laid down in a number of ILO Conventions and implemented in many countries through bilateral and multilateral agreements. However, ILO Conventions dealing with the social security protection of migrant workers have only been ratified by a limited number of countries. Furthermore, the network of bilateral and multilateral agreements still contains many loopholes. In the absence of ratification of ILO Conventions and social security agreements and in order to guarantee at least some kind of social security protection in case of major contingencies (e.g. invalidity) to their nationals who are working abroad, some labour-exporting countries have thus adopted, on a unilateral basis, their own measures of protection.

The present study discusses the practical problems linked to the extension to migrant workers and their families of social security coverage and entitlements. It further examines the strengths and weaknesses of international conventions and social security agreements concluded for such purposes in recent years, and suggests ways and means by which better protection of migrant workers and their families can be achieved, particularly in the absence of ratification of relevant Conventions or conclusion of social security agreements by migrant-sending and by migrant-receiving countries.

As social security benefits are usually granted on the basis of periods of employment, economic activity or residence, registration either with the statutory national social security scheme or other relevant national authority is required before social security rights are acquired. Registration tends to be available, if at all, to "regular" migrants (i.e. here, those migrants with formal and legal contracts), not those described as "irregular". Therefore, this study will focus more closely on the right of regular migrant workers to social security, than the needs, which are nevertheless important, of "irregular" migrant workers.

II) Social security as a basic human right

a) The origins of social security

Human beings have engaged from earliest times in the search for protection for themselves and their dependents. As a corollary, ensuring one's security has always been placed at the centre of peoples' priorities and has guided their choices and decisions. As communities emerged as the dominant social structure, the principle of mutual solidarity started to develop. Accordingly, systems were designed, which enabled societies to cope with various forms of hardship confronting everyday life. These perceived needs are at the origin of social security, which is considered as one of the main pillars on which overall security rests[3] and, given its very nature, recognised worldwide as a basic human right, part of the broader family of economic, social and cultural rights.

[3] *Social Security Principles*, International Labour Office, Geneva, 1998, p. 1.

Social security can be understood as "the protection which society provides for its members, through a series of measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for children."[4]

b) Social Security in the Universal Declaration of Human Rights and in the International Covenant on Economic Social and Cultural Rights

From a global legal perspective, the recognition of the right to social security has been developed through universally negotiated instruments that describe social security as a fundamental societal right and that grant this right to every human being, as laid down in Article 22 of the Universal Declaration of Human Right adopted in 1948[5], and in Article 9 of the International Covenant on Economic Social and Cultural Rights[6] adopted in 1966. Although the Universal Declaration of Human Rights, adopted as a United Nations General Assembly Resolution creates no binding obligations for states per se, it is widely held that some of its provisions have become part of customary international law, due to the widespread acceptance of its authority and the strong moral force it carries[7]. As for the International Covenant on Economic Social and Cultural Rights, it establishes under Article 2 the obligation of State Parties to take steps, to the maximum of their available resources, with a view to progressively achieving the full realisation of the rights recognised by the Covenant, by all appropriate means, including the adoption of legislative measures, and guarantees the exercise of the rights without discrimination. Ratified as of January 2006 by 152 countries, its implementation is monitored by the Committee on Economic, Social and Cultural Rights[8]. A more recent human rights instrument, The

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[4] *Introduction to social security*, International Labour Office, Geneva, 1989, p.3.

[5] *Universal Declaration of Human Rights*, adopted by General Assembly Resolution No. 217A (III) on 10 December 1948, Article 22:
"Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

[6] *International Covenant on Economic, Social and Cultural Rights*, adopted by General Assembly Resolution No. 2200A on 16 December 1966 (entry into force 3 January 1976), Article 9: "The State Parties to the present Covenant recognise the right of everyone to social security including social insurance".

[7] See, for instance, *Oppenheim's International Law* (9th ed.), Volume 1, Parts 2-4, Longman: New York and London, 1996, p. 1004.

[8] The Committee on Economic, Social and Cultural Rights has examined reports of States Parties dealing with the

International Convention on the Protection on the Rights of All Migrant Workers and Members of Their Families,[9] was adopted in 1990 setting out standards as regards the protection of migrant workers' rights, including the right to equality of treatment regarding social security.

c) Social Security in ILO Standards

More detailed and comprehensive than the instruments described above are the Conventions and Recommendations adopted under the auspices of the ILO in the field of social security, which are not limited to declaring the existence of a right, but which also develop content and corollary obligations for the ratifying state, giving more practical significance to the right set out.

Setting international standards in the field of social security has been and is still one of the core activities of the ILO. As early as 1919, the preamble of the International Labour Organisation Constitution set forth the following goals in this field: the "… prevention of unemployment …", the "… protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old-age and injury …" and "… protection of the interests of workers when employed in countries other than their own… ". Underlying these objectives were "… sentiments of justice and humanity… ", as well as a desire to secure the permanent peace of the world.

In 1944, the General Conference of the International Labour Organisation recognised the "solemn obligation" of the International Labour Organization to further encourage among the nations of the world programmes which would achieve, *inter alia*, the extension of social security measures "… to provide a basic income to all in need of such protection and medical care… ", as well as "… provision for child welfare and maternity protection… " (Declaration of Philadelphia, 1944).[10]

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right to social security on some occasions, but only indirectly. Most of the concluding observations of the Committee referred to discrimination in administrative decisions regarding entitlement to social security benefits, on the basis, *inter alia*, of gender, occupation and marital status.

[9] *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, adopted by the UN General Assembly Resolution No. 45/158 of 18 December of 1990.

[10] *Declaration concerning the aims and purposes of the International Labour Organization* (Declaration of Philadelphia), adopted by the International Labour Conference on 10 May 1944, Article III (f).

Hence, establishing social security as a basic right for all workers and promoting its respect and application by member states is part of the ILO's mandate. Since its first session in 1919, the International Labour Conference has adopted 186 Conventions, out of which 31 specifically concern social security. Out of the 194 Recommendations adopted before 2006, 23 specifically deal with social security. The ILO Governing Body reviewed these Conventions and Recommendations relating to social security in 2002 in the light of the current needs of the international community, and confirmed that it regards 8 of these Conventions[11] and 7 of these Recommendations[12] as being up-to-date.

The *Convention on Social Security (Minimum Standards), No.102,* is the flagship of ILO social security conventions as it is the only international instrument that sets worldwide-agreed minimum standards for all nine branches[13] of social security. As such, it is recognised as an instrument which has had substantial influence in the development of social security in national systems in various regions of the world, and which, therefore, is deemed to embody an internationally accepted definition of social security[14]. Such influence has also been felt at the regional level, where, for instance, Convention No. 102 was used as the blueprint for regional instruments such as the European Code of Social Security. Its principles are reflected in other regional instruments such as the European Social Charter, the Treaty of Amsterdam of the European Union and those developed in Africa and Latin America.

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[11] These are: Social Security (Minimum Standards) Convention, 1952 (No. 102); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Employment Injury Benefits Convention, 1964 (No. 121); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); Medical and Sickness Benefits Convention, 1969 (No. 130); Maintenance of Social Security Rights Convention, 1982 (No. 157); Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168); and Maternity Protection Convention, 2000 (No. 183) .

[12] These are: Income Security Recommendation, 1944 (No. 67); Employment Injury Benefits Recommendation, 1964 (No. 121); Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131); Medical and Sickness Benefits Recommendation, 1969 (No. 134); Maintenance of Social Security Rights Recommendation, 1983 (No. 167), Employment Promotion and Protection Against Unemployment Recommendation, 1988 (No. 176); and Maternity Protection Recommendation 2000 (No. 191).

[13] The nine classical branches of social security are understood, under international social security law, as comprising: medical benefit; sickness benefit; unemployment benefit; injury benefit; old-age benefit; invalidity benefit; family benefit; maternity protection; and survivor's benefit.

[14] ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (IA), International Labour Conference, 91st Session, 2003, p.20, para.53.

III) Restrictions to migrant workers' social security rights under national legislation

Migrant workers often face difficulties with regard to social security coverage and entitlement to benefits that national workers and those who have lived and completed their whole working life in one country do not face. These difficulties are mainly due to the fact that social security systems are established under national legislation and are either linked to periods of employment, economic activity, or residence. Thus, national social security laws often contain features that are to the disadvantage of workers who migrate from one country of employment to another as compared with nationals who only work in their country of origin.

a) Restrictions to social security rights due to the principle of territoriality

Several ways in which migrant workers tend to suffer disadvantage regarding social security stem from the *principle of territoriality*. The incorporation of this principle in national legislation has the effect of limiting the scope of application of social security legislation to the territory of the country in which it has been enacted. This principle is not only a reflection of the sovereignty of a state, but also a result of the technical impossibility of enforcing mandatory legislation in another country. Two major problems, which arise from the implementation of this principle, are:

- the loss of coverage, and
- the limitation on the "export" of benefits abroad.

By virtue of this principle, workers who are leaving their country of origin to work abroad may lose coverage under their national social security system and thus run the risk of having no social security coverage, either in their country of origin, or in their country of employment.

It may also happen that, as a result of applying this principle, beneficiaries residing abroad are debarred from "exporting" their benefits to be paid in their country of residence, or the export of benefits abroad may be made conditional on the conclusion of bilateral or multilateral social security agreements with the country of residence. Thus, migrant workers who return to their country of origin may be totally deprived of their social security benefits, or deprived of the

benefit if their country of origin did not conclude any social security agreement with the country of employment. Such limitations may be due to monetary restrictions or to administrative problems (e.g. benefits in kind such as medical services cannot be provided directly by the competent social security institution outside of its area of competence), but may also be based on the underlying idea that a State is, in the first place, responsible for the people living within its borders.

b) Restrictions to social security rights due to the principle of nationality

Migrant workers' social security rights may also be affected by the *principle of nationality.* The inclusion of this principle in national social security legislation may result in the exclusion of foreign workers from social security coverage under the national schemes. While such discriminatory rules can be found in some countries, few go as far as to entirely deny social security coverage to foreigners, although some foreign workers are denied access to specific social security benefits.

c) Restrictions to social security rights due to the lack of conclusion of bilateral or multilateral agreements

In addition, migrant workers face the risk of losing their social security rights when they are successively or alternately covered by the schemes of two or more countries. In almost all countries, the payment of benefits, with the exception of employment injury benefits, is conditional upon a qualifying period of contributions or employment or residence. While such a qualifying period tends to be relatively short for short-term benefits, including sickness benefit, maternity benefit or unemployment benefit, it can be up to 15 years and more for old-age, invalidity and survivors' pensions. Due to these long qualifying periods, migrant workers may risk losing entitlement to benefits if different periods of service in each country are not accumulated, with the result that qualification is disallowed for benefits in any of the respective countries. In this respect, bilateral and multilateral social security agreements ensure that where the right to benefit is conditional upon the completion of a qualifying period, account is taken of the periods served by the migrant worker in each signatory country.

Multilateral agreements, in comparison to bilateral agreements, have the advantage of generating common standards and regulations and so avoiding discrimination among migrants from various sending countries who might otherwise be granted different rights and entitlements through different bilateral agreements. In addition, a multilateral approach eases the bureaucratic procedures by setting common standards for administrative rules implementing the agreement.

IV) ILO standards for the protection of migrant workers' social security rights

The need for the protection of migrant workers' social security rights was already recognized at the beginning of the 20th century when the first bilateral agreements were concluded in Europe. These early agreements were aimed especially at equality of treatment and also, in the case of compensation for employment injuries, at the payment of pensions to the injured persons and to their dependents resident abroad[15]. In the following decades, coordinated efforts at the international and regional level led to the adoption of several instruments which aim at guaranteeing migrant workers complete and continuous social security protection on the basis of equality of treatment with national workers.

From ILO's early years, the International Labour Conference has inserted clauses on equality of treatment between national and non-national workers into its social security Conventions. In addition to the general social security Convention which set minimum standards, the International Labour Conference has adopted several instruments which specifically lay down provisions for the protection of migrant workers' social security rights, namely the *Equality of Treatment (Accident Compensation) Convention*, 1925 (No. 19), the *Equality of Treatment (Social Security) Convention*, 1962 (No. 118) and the *Maintenance of Social Security Rights Convention*, 1982 (No. 157), together with its supplementary *Maintenance of Social Security Rights Recommendation*, 1983 (No. 167).

[15] The earliest Convention concerning compensation for employment injury was concluded on 15 April 1904 between France and Italy. For more detailed information see: *Social Security For Migrant Workers*, International Labour Office, Geneva, 1977, pages 1 to 7.

Before describing these Conventions in detail, mention should be made of the five basic principles established through the Conventions, that are part of all bilateral and multilateral agreements on social security, namely:

- *Equality of treatment*, which means that an immigrant worker should have, as far as possible, the same rights and obligations as regular residents;
- *Determination of the applicable legislation* to ensure, by establishing the rules for determining the applicable legislation, that the social security protection of a migrant worker is governed at any one time by the legislation of one country only.
- *Maintenance of acquired rights and provision of benefits abroad*, which means that any acquired right, or right in course of acquisition, should be guaranteed to the migrant worker in one territory, even if it has been acquired in another, and that there should be no restriction on the payment, in any of the countries concerned, of benefits for which the migrant has qualified in any of the others.
- *Maintenance of rights in course of acquisition*, which means that where a right is conditional upon the completion of a qualifying period, account should be taken of periods served by the migrant worker in each country.
- *Reciprocity*, which is an underlying principle of all these Conventions. By its application, equal treatment is to be granted only to nationals from countries, which, by ratifying the relevant instruments, have agreed to apply the same rules. A country, which refuses equal treatment to workers from another country, cannot expect that the other country will in return grant equal treatment to its own workers. This feature of reciprocity is almost unique to this subject of labour migration.

a) Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

The scope of this Convention centres on compensation resulting from industrial accidents. Under its provisions, each ratifying State undertakes to grant nationals of any other contracting party and their dependants the same treatment in respect of accident compensation as it grants to its own nationals. Thus, foreign workers have to be included in the national scheme. There is no

obligation to pay benefits abroad, but if benefits are paid to nationals living abroad, the same should be applied to foreign workers. Equality of treatment must also be guaranteed without any condition of residence in the territory of the State in question. Convention No. 19 is directly applicable without necessitating the conclusion of any bilateral or multilateral agreement between the States concerned; however, the measures for payment of benefit abroad may be determined if necessary between the States concerned.

b) Equality of Treatment (Social Security) Convention, 1962 (No. 118)

To be able to ratify this Convention, a State must have social security legislation in effective operation within its territory, covering its own nationals for one or more branches of social security corresponding to those defined by the Social Security (Minimum Standards) Convention, 1952 (No. 102). In ratifying this Convention, States are free to choose the branch or branches to which its provisions would apply. There is no need for social insurance schemes to provide periodical benefits; state run schemes, a provident fund or even a scheme based on direct employers' liability could do so. The purpose of this Convention being merely co-ordination of national codes of social security legislation, it does not even require a minimum development of these legislations.

According to Article 3, paragraph 1, the Convention grants the benefit of equality of treatment to nationals of other State Parties to the Convention (global reciprocity). Equality of treatment, however, should also be provided to refugees and stateless persons without any condition of reciprocity (Article 10).

Equality of treatment shall apply not only in the territory of the State concerned, but also without any condition of residence when workers reside abroad. This means that if nationals (including members of their family or survivors) are granted social security benefits when they are residing abroad, they shall be provided, likewise, in the same circumstances, to the nationals of any other State in which the Convention is in force. In this regard, the Convention provides for a global reciprocity: equality of treatment applies irrespective of the branches of social security for which a ratifying State has accepted the obligations of the Convention, even if the other State

in question has no legislation at all on the same benefit. However, a ratifying State does not need to apply the principle of equality of treatment to nationals of another State regarding a specific branch, if that State does not grant equality of treatment with regard to the specific branch even though it has enacted legislation relative to that branch[16].

Convention No. 118 requires State Parties to it to endeavour to participate in schemes for the maintenance of acquired rights and rights in course of acquisition in favour of nationals of other State Parties to the Convention, and for each branch accepted by these States (Article 7). Such a scheme should, in particular, provide for the totalization of periods of insurance, employment or residence and of assimilated periods for the acquisition, maintenance or recovery of rights and for the calculation of benefits.[17]

Article 5 of the Convention lays down the principle of the provision of benefits abroad with respect to invalidity benefits, old-age and survivors' benefits, employment injury benefits and death grants. This obligation is limited to the nationals of the State concerned and to those of other States, which have accepted the obligations of the Convention for the same branch (reciprocity branch by branch). However, the payment abroad of so-called "non-contributory benefits" may be made subject to the participation of the Member state concerned in bilateral or multilateral social security agreements.

As for the maintenance of the acquired rights to short-term benefits, there is an obligation for the ratifying States to endeavour to negotiate in good faith the conclusion of bilateral or multilateral instruments. These agreements must provide for the maintenance of rights in course of acquisition to short-term as well as long-term benefits, irrespective of whether the entitlement to the benefit is subject to a qualifying period.

Finally, the Convention requires State Parties to it to afford each other administrative assistance free of charge in order to facilitate the implementation of its provision and of their respective legislation (Article 11).

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[16] Article 3(3) of the Convention in comment.
[17] ILO GB.283/LILS/WP/PRS/3, 283rd Session Geneva, March 2002, p. 14.

c) Maintenance of Social Security Rights Convention, 1982, (No. 157) and Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

Convention No. 157 supplements Convention No. 118 as it provides for the maintenance of migrant workers' social security rights and the maintenance of these rights in course of acquisition. Convention No. 157 applies to each of the nine branches of social security for which a State Party has legislation in force (Article 2), unlike Convention No. 118, which allows State Parties to choose just one or more out of the nine branches. Unlike Convention No. 118, it contains no provisions requiring State Parties to accord within their territory equality of treatment between nationals and non-nationals. Instead, it deals with two issues not addressed in Convention No. 118: determination of the applicable legislation in accordance with rules set by the Convention in order to avoid conflicts of laws (Article 5) and administrative assistance and assistance to persons (Part V), which require State Parties to the Convention to promote the development of social services to assist persons concerned in their dealings with the authorities, institutions and jurisdictions, particularly with respect to the award and receipt of benefits to which they are entitled and the exercise of their right of appeal (Article 14).

Every State Party must endeavour to participate with every other State party concerned in schemes for the maintenance of rights in course of acquisition in respect of each branch of social security for which every one of them has legislation in force (Part III). Such schemes must provide for the adding together of periods of insurance, employment, occupational activity or residence with a view to the acquisition, maintenance or recovery of rights and the calculation of benefits. The schemes must also determine the formula for awarding benefits as well as for the apportionment of the costs involved. The Convention further requires State Parties to it to endeavour to participate in schemes for the maintenance of rights acquired under their legislation as regards each branch of social security for which each of them has legislation in force (Part IV).

The Convention also provides for the provision of benefits abroad (Article 9). For long-term contributory benefits, such provision is a direct obligation deriving from the right acquired under the legislation of the State Party. The obligation covers beneficiaries who are nationals of a

State party or refugees or stateless persons, irrespective of their place of residence. In the case of non-contributory benefits, the conditions for the provision abroad are determined by mutual agreement between the States concerned. The Convention further establishes specific rules for the payment of short-term benefits to beneficiaries residing abroad (Article 10).

Convention No. 157 is supplemented by the *Maintenance of Social Security Rights Recommendation, 1983 (No. 167),* which contains comprehensive model provisions for the implementation of the Convention (see Annex II of the Recommendation). Annex I of the Recommendation contains model provisions for the conclusion of bilateral or multilateral social security agreements. They cover all nine branches of social security as defined by ILO Conventions and consider all different kinds of schemes. In addition, the model provisions contain the common definitions, the rules on the applicable legislation, rules on alternative methods of maintaining rights in course of acquisition for different kinds of benefits, different alternatives for the maintenance of acquired rights and provision of benefits abroad, and miscellaneous provisions on mutual assistance between different national institutions.

d) Social security protection of irregular migrant workers in ILO instruments

As regards social security benefits, the relevant ILO social security instruments make no reference to the protection of migrant workers in an irregular situation. The same applies with respect to other international instruments that deal with migrant workers in an irregular situation and with social security. One exception, however, can be found in the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which stipulates that migrant workers in an irregular situation shall have the same rights as regular migrant workers concerning social security rights arising out of past employment. This provision must in particular be understood for the purpose of acquiring rights to long-term benefits. Within this context, it appears from the *General Survey on migrant workers* that the wording “past employment” refers to past periods of both legal and illegal employment. Paragraph 34(1)(b) of the Migrant Workers Recommendation, 1975 (No. 151), which accompanies Convention No. 143, recommends that migrant workers,

irrespective of their legal status, who leave the country of employment should be entitled to benefits which may be due in respect of any employment injury suffered[18].

V) Regional Co-ordination Instruments

Multilateral co-ordination of social security legislation has developed not only at the international, but also at the regional level. The first instance of this trend dates to a convention concerning reciprocity with regard to employment injuries concluded by the Scandinavian countries (Denmark, Norway, Sweden) in 1919. Since the Second World War, this regional movement has undergone a remarkable expansion under the influence of economic integration. In that connection, the co-ordination of social security legislation was very soon seen to be an ingredient of the liberalization of the movements of manpower and of the free movement of workers that was needed in order to remove the obstacles due to the restrictions and losses of rights resulting from the separate application of different social security legislation.

Having regard to the new responsibilities, presented by the above evolving situation, the regional organizations concerned generally turned – for technical collaboration in the design of multilateral agreements – to the ILO due to its long experience and extensive qualifications in the field of international co-ordination. The ILO has thus been associated with the preparation and, when appropriate, the application of most of the regional instruments of social security adopted after the Second World War. These include European organizations (especially the Central Commission for Rhine Navigation); Caribbean organizations (such as the Caribbean Community Countries (CARICOM)); in Africa, the Common African and Mauritanian Organization and the Economic Community of West African states; in Europe, the Council of Europe, the East European Economic Community; in the Americas, the Organization of Central American States and the Countries of the Andean Group. Due to these various involvements, the ILO was able to contribute to the protection of migrant workers' rights not only at the international level, but could at the same time ensure a measure of concerted action at the regional level.

[18] *Migrant Workers*, Report III (Part B) International Labour Conference 87th Session, Geneva 1999,sections 307 and 308, page 111 and 112.

a) Coordination of social security rights in the European Economic Community

The European Economic Community (EEC) was founded in 1957 by the EEC Treaty[19] to establish a common market between its Member states[20]. As a consequence of the progressive economic integration established under the Treaty, the need for coordinating the social security legislation of Member states very soon became apparent as did the importance of regulating intra-regional migratory flows and the treatment of non-national workers. In this respect, EC Regulation No. 1408/71 on the application of social security schemes of employed persons and their families moving within the Community was adopted in 1971. Rules for its administrative execution were then adopted in 1972 in EC Regulations. Its application was subsequently extended to self-employed persons and members of their families[21], students[22] and nationals of third countries[23]. It should be noted, however, that Regulation 1408/71, does not yet cover supplementary social security schemes.

Regulation 1408/71 is applied between EU countries. Its personal scope has been extended by Association Agreements concluded between EU and Maghreb countries (Algeria, Morocco and Tunisia). It also applies to the countries of the European Free Trade Association (EFTA) (Iceland, Liechtenstein and Norway, with the exception of Switzerland) by virtue of the EC-EFTA European Economic Space Treaty. An extension of the scope of these Regulations to cover all workers in the EU irrespective of their nationality is under consideration.

The personal scope of the Regulation includes employees or self-employed persons and their survivors, as well as civil servants or persons treated as such. The material scope of the Regulation covers sickness, maternity, unemployment and family benefits and death grants, as well as invalidity, old-age, survivors' benefits and employment injury benefits, as provided in the

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[19] *Treaty establishing the European Economic Community* (EEC), adopted on 25 March 1957.

[20] The ECC founding countries are: Belgium, France, Germany, Italy, Luxembourg and The Netherlands, following which 19 additional countries joined. As of February 2006, there are 25 Member states: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

[21] Regulation (ECC) No. 1390/81, 12 May 1981.

[22] Regulation (EEC) No. 307/1999, 8 February 1999.

[23] Regulation (ECC) No. 0859/2003, 14 May 2003.

national legislation of Member states. Social assistance and medical assistance are excluded from the scope of the Regulation.

The Regulation also states the general principle according to which the categories of persons covered by the Regulation are exclusively subject to the legislation of the State where the activity is exercised. However, the Regulation provides for exceptional cases where either the *legislation of the State of residence* of the employee or the *legislation of the State of residence of the employer* are applicable.

Special rules are provided for the conditions of entitlement to benefits, its calculation, and payment of these benefits. These envisage the *aggregation of insurance periods* completed under the legislation of several Member states is envisaged with regard to the completion of the qualifying period and the calculation of the benefits.

b) Coordination of social security rights in the context of the Council of Europe

Other than in the European Union context, multilateral agreements have been concluded under the auspices of the Council of Europe in order to apply the *Principle of equality of treatment* in the field of social security to nationals of Member states[24].

The *European Interim Agreements on Social Security Schemes* of 1953 set out the right to equality of treatment for nationals of contracting parties with regard to social security schemes and, in addition, extend to nationals of all parties the advantages of bilateral and multilateral agreements concluded between them. The first of such agreements concerns old-age, invalidity and death benefits, whereas the second includes the other branches of social security. The *European Convention on Social Security*[25], which entered into force in 1972, mainly reflects the principles and substantial provisions encompassed in EU Council Regulation 1408/71.

c) Other social security agreements in Europe

[24] The Council of Europe groups together 46 countries of Central, Eastern and Western Europe.
[25] *European Convention on Social Security*, adopted on 16 April 1964 is available on the Council of Europe website: http://conventions.coe.int.

When the *European Convention on Social Security*[26] entered into force in 1972, most of the multilateral social security conventions adopted previously by European countries became outdated, due to their replacement by relevant provisions of the Convention or by new multilateral agreements concluded in application of certain provisions of the Convention[27]. The Convention, however, specifically provided for the remaining in force of three of the existing agreements, together with any legislative instruments which would codify, amend, supplement, or bring these agreements into force.[28] Those were: the *Agreement concerning the social security of Rhine Boatmen* of 1950, revised in 1961 to ensure conformity with EEC Regulations Nos. 3 and 4; the *Convention on social security* concluded on 5 September 1955 between Denmark, Finland, Iceland, Norway and Sweden, as modified by subsequent Agreements and Protocols, as well as the Supplementary Agreements to that convention; and the *European Convention of 9 July 1956 on Social Security for International Transport Workers*.

d) Social security agreements in Africa

In 1993, the Economic Community of West African States (ECOWAS)[29] adopted the *General Convention on Social Security* to ensure the equality of treatment of treatment for cross-border workers and the preservation of their social security rights when living abroad. Elaborated with the assistance of the ILO, this multilateral agreement constitutes a synthesis of Member states' social security systems and replaces all previous social security agreements concluded between ECOWAS Member states. The agreement guarantees equality of treatment between national and non-national workers under national social security legislation. Furthermore, it contains provisions for the determination of applicable legislation. The personal scope of the agreement covers all workers and their families who qualify for social security benefits, while the material scope covers invalidity, old-age and survivors' benefits, benefits in respect of occupational injuries and diseases, family and maternity benefits and sickness benefits. A Committee of Experts was established under the agreement. It is not only entrusted with the fostering of cooperation between Member states in the field of social security, but also with the

[26] *Ibid.*, note 8.
[27] *Ibid*., note 8, Article 5.
[28] *Ibid.*, note 8, Article 6(3), in conjunction with Annex III (I) to the Convention on Social Security.
[29] ECOWAS is comprised of Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, Gambia, Ghana, Guinee, Guinee Bisau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

provision of direct assistance to migrants themselves, in particular regarding the legal protections available to them in the host country[30].

Within the context of the Economic Community of the Countries of the Great Lakes (CEPGL)[31], a general social security convention was adopted in 1978 and came into force in 1980. It is modelled on international instruments, with the sole difference being that it does not extend its scope of application to family and maternity benefits.

As of March 2006, no social security agreement had been concluded by the Southern African Development Community (SADC) countries[32]. With regard to the East African Community (EAC) countries[33]no agreement had been concluded, but it should be noted that discussions on the adoption of an EAC social security agreement were under way.

e) Social security agreement of the Caribbean Community Countries (CARICOM Agreement on Social Security)

The *CARICOM Agreement on Social Security* has been signed within the perspective of harmonizing the social security legislation of Member states[34]. It explicitly refers to ILO Conventions in its preamble and is based on the three fundamental principles stated therein: equality of treatment for residents of the contracting parties under their social security legislation; maintenance of rights acquired, or in course of acquisition; protection of and maintenance of such rights notwithstanding the changes of residence among their respective territories. The provisions of the Agreement are largely based on the model provisions for the conclusion of bilateral or multilateral social security instruments set out in ILO Recommendation No. 167 of 1963. The

[30] For more information see: Robert, R., *The social dimension of regional integration in ECOWAS*, Working Paper No. 49, Policy Integration Department, ILO, Geneva, 2004.
[31] The CEPGL is comprised of Burundi, the Democratic Republic of the Congo and Rwanda.
[32] The SADC is comprised of Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar (membership pending), Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
[33] The EAC is comprised Kenya, Tanzania (and Zanzibar) and Uganda.
[34] The following countries constitute the CARICOM membership: Antigua & Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts & Nevis, Saint Lucia, St. Vincent & The Grenadines, Suriname, and Trinidad & Tobago.

Agreement entered into force in 1997. As of March 2006, thirteen Member states had so far signed and ratified the Agreement, and twelve Member states had enacted domestic legislation to give legal effect to it.

The personal scope of the Agreement includes insured persons who are or have been subject to the applicable legislation of one or more contracting parties as well as to their dependants and survivors, irrespective of nationality. Its material scope applies to long-term benefits, namely invalidity, old-age and survivors' pensions, disablement pensions and death benefits.

The insured persons are subject exclusively to the legislation of one contracting party (generally, the legislation of the state where they are employed), even if they are resident in the territory of another contracting party. Specific exceptions to this rule are provided for several categories of workers as, for instance, employees of transnational enterprises.

VI) Application of social security protection of migrant workers in practice

Today, of the 86 million estimated migrant workers, only a small fraction is likely to enjoy social security benefits. Most of the workers who do enjoy some degree of social security protection come from OECD countries. Considering that in most cases migrant workers move from less developed to more developed countries, the question arises as to the underlying causes of such a low level of coverage both in terms of access and entitlement to benefits. To address this question, it is necessary at the outset to look at the legislation and practice of the states most concerned by labour migration.

An examination of the situation shows that all of the twelve main migrant receiving countries[35] in the world have social security schemes in place, mainly social insurance and social

[35] According to size: United States, Russian Federation, Germany, Ukraine, France, India, Canada, Saudi Arabia, Australia, Pakistan, United Kingdom, The People's Republic of China.

assistance schemes, universal benefits schemes, as well as schemes sponsored by employers[36]. However, only a few countries guarantee comprehensive social security protection to migrant workers under the national social security system in the form of access to social security coverage, entitlement to benefits and the right to receive the benefit without any condition of residence and irrespective of the conclusion of social security agreements. France and Poland are among these countries in which migrant workers have the same rights to social security benefits as national workers and which guarantee the export of benefits to migrant workers' home countries, irrespective of the conclusion of bilateral or multilateral agreements with these countries.

ILO Conventions for the protection of migrant workers' social security rights and their ratifications clearly illustrate the current situation of migrant workers. A close look at the situation shows that the *Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19),* which requires equality of treatment between national and non-national workers for employment injuries, is ratified by 120 ILO Member states[37], nine of which belong to the twelve main migrant sending countries (see Annex) and seven belong to the twelve main migrant receiving countries (see Annex). *The Equality of Treatment (Social Security) Convention, 1962 (No. 118)* which provides for, inter alia, equality of treatment between national and non-national workers, the export of certain benefits abroad, and which encourages State Parties to participate in social security agreements, is ratified by 38 ILO Member states[38]. Seven[39] of these ratifying countries belong to the twelve main migrant sending countries but only four[40] of them belong to the twelve main migrant receiving countries. Moreover, only one[41] of the twelve main migrant sending and none of the twelve main migrant receiving countries has ratified the *Maintenance of Social Security Rights Convention, 1982 (No. 157)* which provides for the maintenance of migrant workers' acquired social security rights and rights in course of acquisition and which received three ratifications in total.

[36] See: *ILO Migration Survey 2003: Country summaries*, ILO, Geneva, 2004.
[37] See: www.ilo.org/ilolex/english/convdisp1.htm
[38] Ibid
[39] These ratifying countries are: Bangladesh, India, Italy, Mexico, Pakistan, Philippines and Turkey.
[40] These ratifying countries are: France, Germany, India and Pakistan.
[41] See: www.ilo.org/ilolex/english/convdisp1.htm

The above does not mean, however, that countries that have not yet ratified the three noted Conventions do not apply the *Principle of equality of treatment*. Almost all of the main migrant receiving countries make no distinction between nationals and non-nationals in their social security legislation and practice. For instance, the United States, which is the biggest migrant receiving country of the world and which has established social insurance and social assistance schemes as well as schemes sponsored by employers[42], treats legal migrant workers under these schemes in the same way as national workers. Worldwide, equality of treatment between national and non-national workers prevails in most social security legislation. This state practice is also reflected in the twelve main migrant receiving countries: In addition to the United States, Canada, China, France, Germany, India, and the United Kingdom[43] also grant equality of treatment regarding social security coverage without any restrictions as to nationality. Further, Pakistan, by virtue of its ratification of Convention No. 118, grants equality of treatment to nationals of those countries which are also legally bound by the Convention.

Some countries, however, discriminate against migrant workers under their national legislation by excluding all of them, or specific categories of them, from coverage or entitlement to certain benefits, or grant them less favourable treatment. In Australia, a major migrant receiving country, migrant workers only have the same access to social security cash benefits as Australian nationals, if they are holders of permanent resident visas and if these holders of permanent resident visas satisfy residential requirements. Holders of a temporary visa do not have access to social security benefits. Some countries even go as far as excluding migrant workers from total or partial social security coverage on the basis of the *principle of nationality*. An example is Saudi Arabia, the eighth biggest migrant receiving country of the world, where foreign workers have been excluded since 1987 from coverage under the statutory old-age, invalidity and survivors' benefits schemes. They are only covered against the risk of employment injury, and in the case of permanent disability, migrant workers only receive a lump-sum payment while national workers are entitled to a pension.[44] Hungary, Kuwait, the Republic of

[42] *ILO Migration Survey 2003: Country summaries*, ILO, Geneva, 2004, pages 421 and 422.
[43] Ibid., pages 110, 183, 192, 255 and 416
[44] *Social Security Programs Throughout the World – Asia and the Pacific, 2004*. Joint publication by the International Social Security Association, Geneva, and the Social Security Administration, Office of Policy, Office of Research, Evaluation and Statistics, Washington, March 2005, pages 163 and 164.

Moldova and Qatar have also excluded foreign workers from coverage under their national insurance scheme for old-age, invalidity and survivors' pensions.

As regards payment of benefits abroad, discrimination is much more widespread. A number of countries suspend the payment of benefits to migrant workers who reside abroad, while they export the benefits to their own nationals who reside abroad. Others go as far as to completely restrict the export of benefits, while some countries make the payment of benefits abroad conditional on the conclusion of reciprocal social security agreements with the countries of residence. Some others provide for a lump-sum benefit instead of a pension if the insured person leaves the country. Apart from these inequalities, non-national workers run the risk of losing their rights when they are successively or alternatively covered by the schemes of two or more countries.

The restriction of payment of benefits to migrant workers abroad while no such restriction applies to national workers is illustrated in the Indian legislation, which provides for the export of certain benefits (employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivor's benefit) to its own nationals, but not to migrant workers. Kazakhstan, a major migrant receiving country, which has a social protection system comprised of a provident fund and social assistance, does not allow the export of any benefit for migrant workers abroad, while nationals are entitled to receive their pensions as well as short-term benefits such as medical care, sickness benefit, maternity benefit and family benefit when residing abroad[45]. The same situation applies to Malaysia[46], which allows the export of employment injury, invalidity and survivors' benefits to Malaysian nationals only. Similarly, the South African legislation provides for the export of medical care, maternity, invalidity, survivors' and employment injury benefits to nationals while non-nationals are only entitled to receive employment injury benefits abroad.

Among those countries which restrict completely the payment of benefits abroad are China and the United Arab Emirates, which both belong to the twelve major migrant receiving countries of the world. Some other countries, as Belgium and the Netherlands do not allow the

[45] *ILO Migration Survey 2003: Country summaries.* ILO, Geneva, 2004, page 230.
[46] *ILO Migration Survey 2003: Country summaries.* ILO, Geneva, 2004, page 255.

export of non-contributory benefits, while others, like Sweden, allow the export of universal non-contributory benefits only within the European Union.

Most countries, however, make the export of benefits abroad dependent on the ratification of international conventions or the conclusion of social security agreements with the countries of residence in order to control the ongoing entitlement to benefits of insured persons. In addition, many countries allow the accumulation of social security rights only when either bilateral or multilateral social security agreements have been concluded. Australia, Canada, Germany, Japan, United Kingdom and the United States, amongst the twelve main migrant receiving countries, allow the export of benefits and the accumulation of acquired rights or rights in course of acquisition only in case of the conclusion of bilateral or multilateral social security agreements or the ratification of international social security conventions.

The network of social security agreements is particularly dense among industrialized countries (see the EU Regulation No. 1408/71 which superseded the previous network of bilateral and multilateral instruments of European countries) and other OECD countries. In addition, many agreements have been concluded between European countries and their former "colonies". Several multilateral instruments adopting the European model have also been concluded among developing countries belonging to economic communities, as is the general *Convention on Social Security*, adopted by ECOWAS.

However, there still exist significant areas within Africa and Asia without any kind of social security conventions or agreements, which is often due to the fact that social security systems of migrant sending countries are insufficiently developed. This often impedes migrant sending countries from the conclusion of social security agreements with migrant receiving countries. Also the widespread use of provident fund schemes, particularly in former British colonies such as Kenya and Uganda, inhibits these countries from concluding such agreements. In addition, migrant sending countries often do not have the administrative capacity to implement such agreements and to assume the responsibility of distributing social security benefits. Thus, there are only a few developing countries, usually migrant sending countries, which have concluded bilateral agreements with migrant receiving countries.

The table "Bilateral social security agreements among the top 12 migrant sending/receiving countries" displayed in the Annex to this report shows that, out of 20 social security agreements concluded between the twelve major migrant sending and migrant receiving countries, fifteen of these agreements were concluded between developed countries while only five agreements were concluded between developing and developed countries. In addition, as already mentioned, only four out of the 12 most important migrant receiving countries and only 7 out of the 12 major migrant sending countries have ratified Convention No. 118, which, amongst other provisions, ensures the export of social security benefits abroad.

A closer look at the network of bilateral and multilateral agreements reveals that few only of these agreements have been concluded between migrant sending and migrant receiving countries.

For example, the United States, which is the main migrant receiving country in the world, has concluded social security bilateral agreements with only 20 countries[47]. All of these would be considered as developed countries, with only two exceptions, which may be considered as less than fully developed[48]. China and Australia, which belong to the most important migrant receiving countries, have concluded agreements with only few countries, none of which belongs to the developing countries. Neither South Africa, the main migrant receiving country in Africa, nor Ethiopia, the third biggest migrant receiving country in Africa, are bound by any social security agreement.[49]

The situation is similar with regard to major migrant sending countries. For example, Nigeria, the main migrant sending country in Africa, has concluded only two social security agreements; India, a major migrant sending country has concluded agreements with only two countries, neither of which belongs to the group of major migrant receiving countries. Mexico, the second major migrant sending country in the world, has concluded only five bilateral

[47] *ILO Migration Survey 2003: Country summaries.* ILO, Geneva, 2004, page 255.
[48] *ILO Migration Survey 2003: Country summaries.* ILO, Geneva, 2004, page 255.
[49] *ILO Migration Survey 2003: Country summaries*, ILO 2004, pages 168 and 169.

agreements, but has no such agreement in force with the United States, which is the major receiving country for its migrant workers.

In summary, it appears that almost all countries grant equality of treatment between national and non-national workers regarding social security coverage. The majority of migrant receiving countries throughout the world, however, make the maintenance of migrant workers' social security rights and their rights in the course of acquisition dependent on the conclusion of social security agreements or treaties signed with migrant sending countries. In practice, it is clear that few migrant sending countries, which are usually developing countries, have concluded such agreements or are bound by social security conventions. In the absence of social security agreements or ratification of the relevant ILO social security Conventions, it is only a small minority of migrant workers who, on returning to their country of origin, are able to realize their entitlements to social security benefits.

VII) Protecting social security rights: Unilateral measures

Failing the ratification of ILO social security Conventions for migrant workers and social security agreements, a number of protective measures for migrant workers can nevertheless be taken by either the country of employment or the country of origin.

Obviously, the *country of employment* can take the most effective measures for migrant workers. First of all, the national legislation could provide equality of treatment between nationals and non-nationals not only for social security coverage, but also for the payment of benefits abroad, in order to protect family members left behind in the country of origin and to ensure the export of benefits from country of employment when migrant workers return home. In principle, long-term benefits can easily be transferred, but the fact that the national currency of the countries concerned may not be convertible or suffers severe devaluation can be a serious obstacle to the export of cash benefits. Exporting short-term benefits is possible but is subject to an agreement, since, for example, the medical verification of the beneficiary's condition is required in the case of medical care and sickness benefits. Similar problems arise for unemployment benefits, which are conditional upon the person being registered with an

employment agency. Some national legislation provides for full or partial reimbursement of contributions in cases where a migrant worker leaves the country of employment. This is unlikely, however, to be regarded as an ideal solution, and does not properly replace social security cash benefits which would be paid periodically and only in the case of the occurrence of the contingency.

For the *labour-exporting country,* it is more difficult to protect the social security rights of migrant workers, but it usually assumes the responsibility for providing at least some protection for its nationals working abroad, when labour-receiving countries are neither in a position to provide it nor willing to negotiate a social security agreement. Social security coverage can usually only be extended outside the usual territorial scope of national legislation for migrant workers abroad who still have a link with the State concerned. For example, in case where the employer is based in the labour-sending country (e.g. *collective contract migration,* a type of migration where national companies export service comprising both labour and entrepreneurial components, as in the field of construction), national legislation can impose on the employer the obligation to provide social security protection under the national scheme. Some countries have also used *recruitment agencies* as a lever to ensure that their migrant workers continue to be given some social security protection by imposing on these agencies a liability to pay contributions (see, for instance, the agencies for the recruitment of seamen in the Philippines).

Another possibility for migrant sending countries to grant social security protection to their returning migrant workers is by offering them coverage under *voluntary insurance* and allowing them to cover retroactively the periods when they were employed abroad. The latter option may be particularly attractive where workers receive a lump-sum settlement of their social security rights accrued in the country of employment (such as under provident fund schemes). The possibility of *voluntary insurance* may be in the form of optional insurance without or after a previous period of mandatory coverage. It must be admitted, however, that the current affiliation to these schemes is often very low.

Since a mandatory extension of national insurance schemes is possible only in exceptional cases, the only feasible alternative in order to protect migrant workers seems to be the *voluntary*

insurance. In this regard, the Jordanian national social security system, administered by the Social Security Corporation (SSC), provides an excellent example of the establishment of voluntary social security insurance for national workers abroad[50]. This scheme is open to Jordanians nationals working abroad and it provides old-age, disability and death benefits. Due to the large number of Jordanian labourers working in Saudi Arabia and the United Arab Emirates without social security coverage, the SSC has established two liaison offices in those countries[51].

Another best practice example is provided by the Philippines. If a Filipino migrant worker has no social security coverage under the laws of the country of employment, coverage is provided instead through one of the schemes comprising the Social Security System of the Philippines (SSS)[52]. These schemes are: the voluntary social insurance system regulated by the Republic Act No. 1161 (Social Security Law)[53]; the Medical Care Program for Overseas Filipino Workers[54], the Philhealth Overseas Workers' Program, and the supplementary pension fund and savings account (known as SSS Flexi-Fund)[55].

The Government of Pakistan, who protects their migrant workers through a group insurance concluded between the Bureau of Emigration of Overseas Employment and the State Life Insurance Corporation, is another example of good practice. This group insurance is financed by a premium paid by applicants on registration with the Bureau and provides benefits in form of a lump sum in the event of disability and death for a period of two years.

A further measure for protecting the social security rights of national labourers working abroad is the provision of waiving the long qualifying periods in favour of migrant workers or the crediting of periods of insurance completed in the countries of employment in order to give migrant workers immediate access to benefits.

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[50] The official website of the Social Security Corporation of the Hashemite Kingdom of Jordan. *Expatriate voluntary contribution*. http://www.ssc.gov.jo/uploads/expatriateVoluntaryContribution.pdf (March 6, 2006).
[51] The Social Security Corporation http://www.ssc.gov.jo/english/ (March 6, 2006).
[52] The Social Security System of the Philippines. News and updates. Taking care of our modern day heroes. http://www.sss.gov. ph/news/feat0484.htm (March 1, 2006)
[53] *NATLEX*, Presidential Decree No. 735, further amending certain sections of Republic Act No. 1161 as amended, otherwise known as the "Social Security Law"
[54] Government of the Republic of the Philippines. Executive Order No. 195 of August 13, 1994.
[55] The official website of the Government of the Republic of the Philippines. Frequently asked questions. Overseas Filipino Workers' Benefit. http://www.gov.ph/faqs/ofw_sss.asp (March 1, 2006)

In addition, labour-exporting countries could establish universal health care and family benefit schemes covering all residents, thus covering family members of migrant workers left behind in the country of origin, and migrants who return to their home country. These schemes, however, are rather exceptional in developing countries, the origin of most migrant workers.

Failing the provision of true social security to migrant workers, some limited facilities on a "last-resort" basis might be provided through the establishment of *government-sponsored foundations*, which would offer a range of services (such as the maintenance of cultural and religious ties with the home country and the provision of information on employment conditions in the country of employment). Foundations can sometimes provide financial assistance to migrant workers otherwise not entitled to social security benefits from other sources, but this assistance is generally only granted in emergency situations at the discretion of the institution and therefore not on a regular basis.

VIII) The way forward

We have reviewed the application of legislative codes of social security protection for migrant workers around the world and found that almost all provide in principle for equality of treatment between national and non-national workers. However, in practice only a very few migrant workers enjoy comprehensive social security protection. This results mainly from the failure of migrant sending and receiving countries either to conclude social security agreements, on a bilateral or multilateral basis, or to ratify the relevant Conventions.

In order to guarantee that social security, as a basic human right, is granted to migrant workers, countries should be encouraged to ratify the ILO social security Conventions relating to migrant workers and implement them through bilateral or multilateral social security agreements, following the model provisions laid down in Recommendation No. 167 on the maintenance of social security rights. The ILO is certainly ready to provide assistance to its Member states in this respect.

By ratifying a Convention, not only does a country generally demonstrate publicly its adherence to the principles contained therein, but it also pledges to apply these principles in national law and practice. This is particularly important in situations where an international element is involved as it is the case for the international migration of labour. The ratification of the relevant Conventions ensures the application of common rules by the different States which are then dissuaded from unilaterally deviating from them.

The ratification of Convention Nos. 19, 118 and 157 gives in fact an immediate advantage to the migrant workers of the ratifying country. The Conventions guarantee directly to the migrant workers of ratifying states equality of treatment with the nationals of the receiving countries which are also bound by the Convention and provide for the payment of accrued benefits, when they return to their home country. Furthermore, any ratification strengthens the position of the government in negotiations with other countries equally bound by these Conventions, as they contain an obligation to endeavour to conclude bilateral or multilateral agreements. The aim of the Conventions is to establish a reciprocal set of direct and indirect obligations, which broaden in line with the increase in the number of ratifications.

However, in the absence either of ratification of these Conventions, or of the conclusion of bilateral and multilateral social security agreements, both migrant sending and migrant receiving countries should be encouraged to adopt unilateral measures for the protection of migrant workers' social security rights, which should provide for:

- **Equality of treatment between national and migrant workers** in national legislation for the coverage of and entitlement to social security benefits;
- **Imposing on recruitment agencies** of migrant sending countries an obligation to **ensure social security protection** for their recruits, as, for example, provided for in the Philippines for the recruitment of Filipino seafarers working on foreign ships;
- Possibility of **voluntary social security coverage** for nationals **while working abroad**, as, for example, is arranged by Jordan, Pakistan and the Philippines;

- Possibility of **voluntary social security coverage** for returning migrant workers by authorizing **retroactive payment of contributions** for the periods during which they worked abroad;
- **Waiving of long qualifying periods** in favour of migrant workers, or crediting of periods of insurance completed in another country in order to give migrant workers immediate access to benefits.

Providing social security protection to migrant workers has become one of the most important social challenges facing the international community. As labour migration has grown over the years, affecting an increasing number of countries and workers, there is an urgent need for the reinforcement of existing measures and the adoption of new ones, at the international, regional and national levels.

In this respect, the ILO has initiated with its constituents and in partnership with other relevant international organizations, a plan of action for migrant workers, which includes a non-binding multilateral framework for a rights-based approach to labour migration. With regard to social security, this ILO Multilateral Framework on Labour Migration, which was received by the ILO Governing Body in March 2006[56] for submission to the Director General of the ILO for publication, strongly encourages ILO Member states to base their relevant national laws and policies on the relevant ILO social security Conventions and Recommendations and promotes the conclusion of bilateral, regional and multilateral social security agreements to guarantee social security coverage and benefits, in addition to portability of social security entitlements to migrant workers.

It is hoped that the publication of the ILO Multilateral Framework on Labour Migration will provide the necessary tools for governments to adopt national strategies and action plans and will foster co-operation between states, as well as regional and international actors so as to strengthen the rights of migrant workers, within which social security represents a vital component.

[56] Draft ILO Multilateral Framework on Labour Migration, Doc. TMMFLM/2005/D.9, ILO Geneva 2005

ANNEX[57]

Main migrant sending and receiving countries[58]

According to the UN International Migration Report 2002, the main migrant receiving country in Africa is Côte d'Ivoire (2'336,000 persons), followed by South Africa (1'303,000) and Burkina Faso (1'124,000)[59]. For the same year, the OECD reported that the three main migrant sending countries are Nigeria (2'115,000 nationals abroad), Egypt (1'293,000) and Morocco (1'255,000)[60].

The largest migrant receiving countries from the Arab States region are Saudi Arabia (5'255,000 migrant residents), the United Arab Emirates (1'922,000), and the Kingdom of Jordan (1'945,000)[61]. As for the emigration flow, there is not available date from the 1999-2005 period.

From the East Asia subregion, the largest migrant receiving countries are the People's Republic of China (3'508,000 foreigns[62]) and Japan (1'620,000)[63], while the main migrant sending countries are, again, the People's Republic of China (2'540,00 nationals residing abroad), Thailand (1'607,000), Viet Nam (1'457,000) and the Republic of Korea (1'450,000)[64].

India is, at the same time, the largest migrant sending/receiving country in South Asia. By 2000, its migrant stock reached 6'271,000 persons, while 7'164,00 nationals resided abroad[65]. In terms of inflows of immigrants, India is followed by Pakistan (4'243,000) and Iran (2'321,000)[66]. The second and third largest migrant sending countries are Pakistan (3'765,000 expatriates), and Bangladesh (3'342,000)[67].

From the South-Asia and the Pacific subregion, the state with the largest migrant stock is Australia (4'705,000 persons)[68], and the two countries with the biggest number of nationals living abroad are Philippines (4'086,000 expatriates) and Indonesia (2'428,000)[69].

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[57] The ANNEX was prepared by Ana Teresa Carrion, Intern of the Social Security Department, ILO Geneva

[58] All the figures are based on 2000 surveys and the numbers do not necessarily add to totals because of rounding.

[59] United Nations, Department of Economic and Social Affairs, Population Division. *International Migration Report 2002*. New York, 2002. Note of the author: the year indicates the date of publication. Most statistics correspond to the year 2000.

[60] Organisation for Economic Co-operation and Development. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3). Prepared by Anne Harrison, assisted by Tolani Britton and Annika Swanson. Paris, France. 2003, revised on September 2004.

[61] UN *International Migration Report 2002*.

[62] According to the UN, the migrant stock of Mainland China is of 513,000 persons, 2'701,000 for Hong Kong and 294,000 for Macau.

[63] UN *International Migration Report 2002*.

[64] OECD. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3).

[65] Idem.

[66] UN *International Migration Report 2002*.

[67] Idem.

[68] UN *International Migration Report 2002*.

[69] OECD. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3).

The third ILO's geographical region, Europe and Central Asia, is further divided into three subregions: Western Europe, Central and Eastern Europe, and Eastern Europe and Central Asia.

The 6 countries with the largest migrant stock in Western Europe are Germany (7'349,000 foreign residents), France (6'277,000), the United Kingdom (4'029,000), Israel (2'256,000), Switzerland (1,801,000) and Italy (1'634,000)[70], while the main migrant sending countries are the UK (3'398,000 people), Italy (3,045,000) and Turkey (2,789,000), Portugal (1'761,000) and Germany (1'498,000)[71].

In terms of immigration flows, Ukraine is the most important country in the Central and Eastern Europe subregion. By the end of the year 2000, it was estimated that 6'947,000[72] foreigners lived in this country, while 4'713,000 Ukrainians resided abroad[73]. The second largest migrant receiving country is Poland, with 2'088,000 foreign residents[74].

The main migrant sending and receiving country from Eastern Europe and Central Asia is the Russian Federation, with 13'259,000 non-national residents[75] and 10'191,000 nationals living abroad[76]. The second largest migrant sending country is Kazakhstan, with 3'028,000 expatriates[77]

The U.S. is the country with the largest migrant stock (34,988 thousand)[78] and the largest number of non-nationals living outside its territory (1'392,000) in America[79]. The Canadian migrant stock is of 5,826 thousand[80]. In terms of emigration, Mexico is the most important country in the continent with approximately 7,898,000 nationals abroad[81].

[70] UN *International Migration Report 2002*.
[71] OECD. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3).
[72] UN *International Migration Report 2002*.
[73] OECD. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3).
[74] UN *International Migration Report 2002.*
[75] Idem.
[76] OECD. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3).
[77] Idem.
[78] UN *International Migration Report 2002*.
[79] OECD. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3).
[80] UN *International Migration Report 2002*.
[81] OECD. *Working Abroad – the benefits flowing from nationals working in other economies* (Annex, table 3).

Comparative table: Main receiving countries[82]

Country	Migrant stock[83]	Employed (contract) immigrants[84]	Source
United States	34’988,000	56,800	UN 2002 (*see footnote 21)*, OECD (*see footnote 22*) and the International Labour Migration Database (year 1999)
Russian Federation	13’259,000	211,361	UN 2002, OECD and the Federal Migration Service of Russia (1999)
Germany	7’349,000	N/A	UN 2002
Ukraine	6’947,000	N/A	UN 2002
France	6’277,000	N/A	UN 2002
India	6’271,000	N/A	UN 2002.
Canada	5’826,000	94,893	UN 2002 and the International Labour Migration Database (2000)
Saudi Arabia	5’255,000	N/A	UN 2002
Australia	4’705,000	135,368	UN 2002 and the International Labour Migration Database (1999)
Pakistan	4'243,000	N/A	UN 2002
United Kingdom	4’029,000	N/A	UN 2002
The People’s Republic of China	3’508,000	N/A	UN 2002
Kazakhstan	3'028,000	N/A	UN 2002
Côte d’Ivoire	2’336,000	N/A	UN 2002
Iran	2'321,000	N/A	UN 2002
Israel	2'256,000	51,000	UN 2002 and the International Labour Migration Database (2000)
Poland	2'088,000	N/A	UN 2002
Jordan	1’945,000	N/A	UN 2002
United Arab Emirates	1’922,000	N/A	UN 2002
Switzerland	1’801,000	N/A	UN 2002
Italy	1’634,000	N/A	UN 2002
Japan	1’620,000	129,868	UN 2002 and the International Labour Migration Database (2000)
South Africa	1’303,000	N/A	UN 2002
Burkina Faso	1’124,000	N/A	UN 2002.

[82] Countries are arranged in descending order, according to the numbers of the second column.
[83] The number of migrants residing in a country at a particular point in time.
[84] Non-national workers who are employed under a legal contract and have the authorization documents for the employment in the host country.

Comparative table: Main sending countries[85]

Country	**Nationals abroad**	**Outflows of contract migrant workers[86]**	**Source**
Russian Federation	10’191,000	450,000	UN 2002 (*see footnote 21*), OECD (*see footnote 22*) and the Federal Migration Service of Russia
Mexico	7'898,000	2’608,386	UN 2002 and the International Labour Migration Database (2002).
India	7’164,000	243,182	UN 2002, OECD and the International Labour Migration Database (2000).
Ukraine	4’713,000	N/A	UN 2002
Philippines	4’086,000	841,628	OECD and Philippines Overseas Employment Administration (2000)
Pakistan	3’765,000	110,136	OECD and the International Labour Migration Database (2000)
United Kingdom	3’398,000	N/A	OECD
Bangladesh	3’342,000	268,182	OECD and the International Labour Migration Database (1999)
Italy	3’045,000	N/A	OECD
Turkey	2’789,000	1’182,697	OECD and the International Labour Database (2000)
The People’s Republic of China	2’540,00	N/A	UN 2002 and OECD
Indonesia	2’428,000	435,219	OECD and the International Labour Migration Database (2000).
Nigeria	2’115,000	N/A	UN 2002
Portugal	1’761,000	26,025	UN 2002 and the International Labour Migration Database (2000)
Thailand	1’607,000	N/A	OECD
Germany	1’498,000	N/A	OECD
Viet Nam	1’457,000	N/A	OECD
The Republic of Korea	1’450,000	N/A	OECD
United States	1’392,000	N/A	UN 2002.
Egypt[87]	1’293,000	1’900,000	OECD and the International Labour Migration Database (2000)
Morocco	1’255,000	N/A	UN 2002

[85] Countries are arranged in descending order, according to the numbers of the second column.

[86] According to the United Nations “contract migrant workers are persons working in a country other than their own under contractual arrangements that set limits on the period of employment and on the specific job held by the migrant (that is to say, contract migrant workers cannot change jobs without permission granted by the authorities of the receiving state”.

[87] The authors acknowledge the inconsistency in the figures related to this country.

Bilateral social security agreements among the top 12 migrant sending/receiving countries

Sending \ **Receiving**		United States	Russian Federation	Germany	Ukraine	France	India[∝]	Canada	Saudi Arabia	Australia	Pakistan	United Kingdom	The People's Republic of China[∝]
		2 out of 20	*0 out of 9*	*4 out of 16 (outside the EU)*	*1 out of 14*	*4 out of 29 (besides the EU)*	*0 out of N/A*	*5 out of 47*	*0 out of 5*	*1 out of 13*	*0 out of 2*	*3 out of 23 (outside the EU)*	*0 out of N/A*
Russian Federation	*1 out of 9*		☒		■								
Mexico	*1 out of 5*						☒	■					
India[∝]	*0 out of N/A*												
Ukraine	*0 out of 14*												
Philippines	*3 out of 10*					■		■				■	
Pakistan	*0 out of 2*										☒		
United Kingdom	*4 out of 23*	■		■		■		■				☒	
Bangladesh[∝]	*0 out of N/A*												
Italy	*6 out of 22 (outside the EU)*	■		■		■		■		■		■	
Turkey[∝]	*4 out of 20*			■		■		■				■	
The People's Republic of China[∝]	*1 out of N/A*			■									☒
Indonesia[∝]	***0 out of N/A***												

☒ Bilateral Social Security Agreements do not apply ■ Existence of ratified Bilateral Social Security Agreements

[∝] Information not available on bilateral social security agreements.