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19. The global governance of labour migration and seasonal workers

Daniela Comandé and Federico Siotto¹

INTRODUCTION

The issue of migrant labour governance is an extremely topical phenomenon that governments around the world must deal with, although affected by different migration routes. The increasing importance comes from the remarkable stock of international migrants worldwide which reveals an ever-growing figure. Even if there is a lack of comprehensive official statistical data on international migrant workers at the national, regional and global levels, from the latest estimates it seems that there are more than 270 million migrants, of which 245 million are of working age (aged 15 and over) in 2019.² Further, the Covid-19 pandemic has affected international labour migration, acting as a sounding board. The magnitude, characteristics and territorial extent reveals the reason why the matter is addressed by different regulatory levels: international, European, national and regional. By considering this picture, this chapter deals with a fragmented system of various sources of law on the phenomenon of labour migration with the scope of better defining the legal framework in force for ensuring decent work. Indeed, even if the employment is not the primary driver, most migration today is linked directly or indirectly to the search for decent work opportunities. The ‘mass migration’ requires the planning of a large-scale solution because it may involve mixed flows of people (refugees and migrants) and reasons (political, economic, social, developmental, humanitarian, etc.) which is hard to categorise.

In the background of each regulatory system on labour migration remains the strong tensions between the need for protection of migrants and their rights and the respect for the territorial sovereignty of the states: this conflict should be dampened following soft regulations and shared policies of the migration phenomenon, but never assuming that there are techniques for compressing it. There is no mistaking that the Global Compact for Safe, Orderly and Regular Migration (GCM), formally endorsed by the UN General Assembly in 2018, is one of the most important steps in this direction and an instrument to promote effective and efficient policy strategy at various levels. Even if it is a non-legally binding intergovernmental agreement, it is expressly rooted in paragraph 6 of the UN 2030 Sustainable Development Agenda urging governments to ‘facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies’³ and to ‘protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment’.⁴ Although the document (GCM) sets ambitious goals which may have a strong influence on national management of the migration phenomenon, at least a sort of moral suasion, it is undeniable that the matter remains in the hands of each state. This is the reason why alongside the agreements reached within the United Nations there are a number of bilateral agreements⁵ between states of origin and countries of destination that play a not

insignificant role in the identification, management and legality of migration flows. Perhaps the human rights approach is the only possible lowest common denominator in the constellation of soft or hard regulation governing the phenomenon.

LABOUR MIGRATION'S DISRUPTIVE POTENTIAL FOR NATION STATES

Labour migration has always produced great and unstoppable changes. In the new millennium, labour migrants have been one of the main concerns of state policies, as particularly noticeable during the Trump presidency in the USA and Britain's decision to leave the EU. In both cases, migrants have been scapegoated for a whole range of social, political and economic problems (Banks and Dias-Abey 2019: 153).

Strict systems of immigration checks are presented by nation states as a means to protect both national workers from competition and migrants from exploitation. However, in practice, they tend to undermine migrants' labour protections. The mechanism of planned foreign labour flows operates as a model that generates 'vulnerable employment', a notion adopted in Great Britain and much criticised (Pollert and Charlwood 2009) for distracting from the responsibilities of employers and labour market structures. In particular, complex and bureaucratic procedures contribute to producing 'precarious workers' over whom employers apply additional and invasive forms of check (Anderson 2010: 303–304).

Understanding the functions of regulations requires an approach that combines legal perspectives with multidisciplinary contributions. The intersection of labour, law and migration represents a truly difficult challenge for any scientific investigation: it is said that scholarly engagement between labour law and migration law could be described as 'two ships passing in the night' (Zou 2016: 565), according to Henry Wadsworth Longfellow's famous expression (Longfellow [1874] 1945).

Cathryn Costello and Mark Freedland (Costello and Freedland 2014), as editors of one of the most distinguished and comprehensive publications on labour and migrants in recent years, consider the impact of immigration on labour law to be varied and complex. The collective volume reveals how migrant status affects labour relations and workplaces. The various essays in the volume identify legislation on immigration as the main factor that can dilute the guaranteed purposes of labour law by privileging employers' interests in labour supply over workers' rights and access to judicial protection (Barnard et al. 2018: 241).

Migration law focuses on the system of control, entry, exit and residence of migrants in the territory of the host state but neglects the labour market motivations that drive much of the development of labour migration schemes (O'Donnell and Mitchell 2001: 271). Moreover, immigration laws create different declinations of migrant workers having different statuses (Fudge 2012: 96): each status is affected by restrictions outside and inside the workplace, having a direct impact on the structure of the labour market and exacerbating power inequality in the employment relationship (Howe and Owens 2016). The literature shows how national legislation creates a variety of migration statuses, which generates an unstable labour supply, concentrated in certain sectors, that has attracted the definitions of 'hyper-dependent' and 'hyper-precarious' (Zou 2015: 145, 147). The role of international migration may constitute a 'regulatory labor market tool' (Bauder 2006: 21); however, it is not by chance that sociologists have rediscovered the concept of 'unfree labour' (Miles 1987) or 'new helots' (Cohen

1987: 17) precisely to describe the condition of the migrant worker as a subject who cannot circulate autonomously in the labour markets of the host state where he or she works. Unlike a free worker, who can enter or withdraw from the labour market according to their will, the extra-economic (especially legal) limits placed on a migrant worker do not make them free to manage their own labour force, regardless of the temporary or permanent nature of their employment contract. Each state shapes the immigration procedures that inhibit the ability of migrant workers to freely circulate in the labour market.

“Unfree labour” is not a legal concept, nor should it aspire to be’ (Costello 2015: 198). Its utility lies in its capacity to demonstrate the complex political economy of labour relations, which can be used to inform understandings of the legal categories of forced labour, servitude and slavery (Fudge 2018: 422). However, the approach towards forms of ‘unfree labour’ – as it is the case of migrant – characterised advanced economies replacing traditional instruments of labour law, as the main remedy to the problem of labour abuse and exploitation, with criminal law (public safety) or at least with the idea that labour markets and especially the freedom of movement of workers (e.g., the EU) are able in itself to guarantee freedom of labour for everyone, as well as migrants. The dreaded risks are on the agenda: the International Trade Union Confederation and some mass media⁶ have reported that foreign workers from Nepal, Pakistan, India, Bangladesh and Sri Lanka have been employed to build the sports facilities for the 2022 World Cup in Qatar. It was noted that on average there were 12 deaths per week, despite the organising committee declaring that only a small number of 37 workers died during the construction of the World Cup stadiums, among which 34 died in non-work-related accidents. The total number may actually be much higher given that many workers come from countries such as Kenya and the Philippines whose figures are unknown. This is just a recent example that shows the critical profiles linked to labour migration, made worse by scandals around alleged corruption of EU politicians and international trade unionists.

However, even if migrant workers still experience hardships and do not enjoy the full exercise of their fundamental rights, the back of such a black page on migration is coloured by some achievements in the sphere of fundamental rights and freedoms. Indeed, following the Progress Report by Building and Wood Workers’ International (BWI)⁷ an important role was played by the Supreme Committee for Delivery and Legacy (SC) regarding improvements in working and workers’ welfare standards around World Cup stadium sites. In particular, the institution of Workers Welfare Forums as a form of representation of migrant workers, as well as several other measures ranging from responsible recruitment to health and safety joint inspections, are important changes. In addition, the main goals in the right direction are the abolition of the Kafala sponsorship system, the Minimum Wage Law and the dispute settlement mechanism.

To manage such a critical reality, it is useful to identify possible tools that can encourage the arrival of foreign workers without thinking that the flows cannot be stopped and overcoming a double degree of distinctions: that between regular and irregular migrants⁸ and that between migration for economic reasons and migration for humanitarian reasons. The just mentioned dichotomies present quite a few difficulties in theoretical and practical terms.

Although a universally accepted definition of an irregular migrant does not exist, it is useful to borrow the meanings from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁹ where we can find the specular definition of regular migrant workers. According to this framework, the irregular situation refers to a migrant who moves or has moved across an international border and is not authorised to enter

or to stay in a state pursuant to the law of that state and to international agreements to which that state is a party. In other words, the situation generally identifies persons moving outside regular migration channels:¹⁰ the irregular situation is akin to the undocumented migrant worker, who is the person not authorised to enter, stay and engage in a remunerated activity in the state of employment pursuant to the law of that state and to international agreements to which that state is a party, according to the international source of law.¹¹

Therefore, following a legal perspective, the distinction between a regular and irregular migrant is formally linked to the possession of a legal authorisation to stay in a country at that time. However, the implementation of this rule encounters considerable difficulties because the status is changeable: the irregularities in migration can arise at various points during the migratory cycle, from departure to transit and entry into the country of destination up to the journey to the country of origin and re-settling there. In addition, the irregularities may be committed against the migrant or by the migrant and it is not so easy to draw a distinction given the fluidity of the situations during migration, in the countries of transit and in the country of arrival. It is possible that the choice to leave was voluntary but later, during the journey, the person has been subjected to torture and violence by traffickers or has become a victim of trafficking, becoming a person in need of protection; or that a worker with a regular residence permit falls into irregularity when the permit expires and is subjected to severe exploitation; or even that the need for protection arises later due to a political change in the country of origin, making a migrant for economic or family reasons a potential refugee. From this unstable context, the artificial distinction between economic migrants and forced migrants shows its weakness. In any case, the protection of safety and dignity of migrants should be the primary objective of international, European or bilateral (regional) agreements between countries of origin and countries of destination, but it often seems merely a facade goal, lacking the proper tools for its realisation.

THE INTERNATIONAL FRAMEWORK

International (UN and ILO)¹² and EU¹³ legal frameworks seem to ensure a regulatory paradigm based on a clear separation between migration for economic reasons and migration for humanitarian reasons.

Paying attention to the various international sources focused on this topic, a marked dichotomy clearly emerges based on the reason that leads people to leave their country of origin. There are, in particular, asylum seekers and refugees (Geneva Convention 1951, Art 1a), on the one hand, and migrant workers (ILO Convention 1949 No. 97, Art 11), on the other. This artificial distinction is always proposed and most recently was reiterated by the UN through the adoption of the Global Compact for Safe, Orderly and Regular Migration (GCM) together with the Global Compact on Refugees (GCR). Although the two Global Pacts are the result of a common vision and a union of purpose aimed at bringing benefits to all those involved in various roles in migration processes, the binary approach is problematic in many aspects. The reasons why people decide to migrate are not always clearly identifiable, nor is the time frame of their project. Therefore, the scope of the definitions can be questioned, especially if we consider that those who look for international protection for humanitarian reasons can then reasonably start to work in the host country, in regular or irregular employment.

Even if the International Labour Organization (ILO) has played a central role, the international convention concerning migrant workers was actually issued by the UN in the 1990s: in this context, first, a wide definition of migrant worker was adopted, covering everyone who has worked, works, or will work in a state different from his/her own state. In addition, the convention applies to all migrant workers regardless of their status (also irregular migrant workers) for the part relating to what are considered human rights; while a specific part is devoted for those workers who are in a condition of regularity with respect to residence ensuring them additional rights. The distinction remains, but the human rights profile comes out strengthened.

This is an issue on which there has been a significant regulatory evolution over time, especially in the ILO, because in recent years, the strategies developed by the organisation (first and foremost the core labour standards) also concern irregular migrant workers.

The ILO convention was written in 1949 and it excluded certain categories of workers from the definition of migrant worker (ILO, Convention 1949, No. 97, Art 11), reflecting the migration trends prevailing at the time. The categories of workers excluded were: frontier workers; artists and members of liberal professions who have entered the country only for a short time; sea-farers; self-employed; persons coming specifically for purposes of training or education; persons on a specific business or assignment, for their organisation, in another country, for a limited or defined period of time, and who are required to leave the country upon completion of their duties or assignment; and workers who stay in a country illegally.

Most of these categories have been included in the above-mentioned United Nations Convention focused on the Rights of All Migrant Workers and the Members of their Families (UN, ICRMW 1990, Art 2(2) (a)-(h)), reflecting the up-to-date understanding of migratory trends from both perspectives: the sending and destination countries (Cholewinski et al. 2009). Different categories of workers are considered: frontier workers, who reside in a neighbouring state, to which they return daily or at least once a week; seasonal workers; sea-farers employed on vessels registered in a state other than their own; workers on offshore installations that are under the jurisdiction of a state other than their own; itinerant workers; migrants employed for a specific project; self-employed workers.

While it is true that the notion of a migrant worker deals with the circumstance of performing work in a country other than one's own, but also in the voluntariness of this condition, it is also true that at least the Migration for Employment Convention 1949 (revised) [No. 97] and the Migrant Workers (Supplementary Provisions) Convention, 1975 [No. 143] presume that they are individuals who move from one state to another under conditions of regularity (Cholewinski 2018: 850). Only in this case are they fully entitled to the rights provided for in the Conventions. On this point, it should also be noted that a significant development has involved the ILO framework, which has also affected the simple definition. According to Convention No. 143 of 1975, migrant workers are first and foremost human beings and, as such, must be granted at least some basic human rights by the host country (which Convention No. 143 of 1975, while covering provisions on equal treatment and emphasising the role of social partners, does not specifically identify) (Cholewinski 2018: 857).

This anthropocentric perspective is reaffirmed by the last intergovernmental agreement already mentioned, the GCM, and it is pursued through a series of substantive and procedural targets. The protection and the rights of migrants are focused on safeguarding human life and reducing the vulnerability profiles of migratory movements, stigmatising discrimination,

improving welcoming conditions, and enhancing factors aimed at integration in destination states.

Looking at the procedural rules, the document aspires to a more efficient circulation of information among states and to improve a better coordinated approach between the country of origin and destination in order to advance the fight against the criminal networks behind numerous events of smuggling and trafficking. Despite the laudable purposes, however, it inadequately provides the tools for creating safe and regular channels to deal with forced migration. From this perspective, the GCM may aggravate one of the most tangible shortcomings of the EU strategies in countries of origin and transit (Cecchini et al. 2018): by assuming a less institutionalised type of cooperation than the model envisioned for refugees, it is established that agreements and shared practices across single states travel outside of precise tracks and structures. The preference for a soft regulatory instrument is linked to the role played by the EU during the GCM negotiations, as well as the preserved difference between economic migrants and refugees (Guild 2018): the same European Commission emphasises how the draft of the Global Compact for Migration largely reflects EU *acquis* and policy as well as the Union's objective to promote multilateral solutions to common problems, in particular in the framework of the United Nations.¹⁴ Nevertheless, at a time when sovereignism is in vogue, there is no surprise if the interest in safe, orderly and regular migration is overridden by the fear of opening borders by creating a kind of soft right to migrate. As a consequence, despite the active involvement of the EU, several EU states have defected during the final stage of the document's approval. This is the proof that there is no room to think that such a complex issue could easily be regulated by binding international agreements placing obligations and constraints on states. Actually, it's reasonable to think of the GCM as a persuasive instrument to overcome the fragmentation of migration governance by addressing all the different issues raised by migration. This makes for a comprehensive approach that contrasts with the previous assemblage of unrelated principles and norms (Pécoud 2021: 18) building upon international standards in human rights.

Notwithstanding all these drawbacks, it is worthy to have drafted an agreement that represents the first attempt to better define a framework on a thorny topic at the global level, given that the management of migration flows does not go beyond examples of regional or bilateral rules. This sphere of regulation shows a patchwork of bilateral agreements to regulate migration, signed by countries of origin and destination in all parts of the world. These agreements are aimed at setting conditions and procedures for recruitment, admission, employment and residence, and return of migrants. Some bilateral migration agreements focus mainly on labour and others on specific topics such as protection issues, portability of social security benefits, etc. Regardless of the specific scope, a bilateral migration agreement is an umbrella expression referring to a range of arrangements in order to facilitate labour mobility between two countries, often temporarily and into particular employment sectors. The framework of these arrangements may be sometimes a legally binding treaty, or a less formal memorandum of understanding, or even other forms of cooperation between administrations in the countries concerned.¹⁵ Usually, the bilateral cooperation is supervised by a joint commission with the scope of monitoring the implementation of the agreement, proposing amendments and discussing follow-up reports.

Looking at the background of these kind of instruments, there is the Global Skill Partnership on Migration (GSPM),¹⁶ which is an initiative between many international organisations¹⁷ to support all the stakeholders involved in the migration process (governments, employers,

workers and their organisations as well as educational institutions and training providers) with the scope of recognising and enhancing migrant workers' skills when moving from a country to another. On the same wavelength, objective 18 of the GCM is focused on investing in skills development and facilitating mutual recognition of skills, qualifications and competences.

This overview shows that fragmentation is the hallmark of every issue revolving around the migration phenomenon. In the patchy context which characterises the intergovernmental negotiations, the GCM offers an historical chance of cooperation to lay down the desirable political horizon towards which all actors should progress (Jubilut and Casagrande 2019). Human rights represent one of the crucial guiding principles of the GCM, which wants to 'ensure effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle'.¹⁸ The 'umbrella approach' of the GCM by facilitating cooperation and shaping the governance of migration according to a human rights-based policy approach, may go beyond the variety of interests, stakeholders, perceptions and understandings which move around the migration cycle across regions, contributing to the fair and effective governance of migration, including labour migration. Instead of pursuing the path of binding conventions often not ratified by important states, the non-legally binding nature of the GCM as a soft means of standardising, spreads evenly the principles to inform the regulation of the migration phenomenon. This is much more useful where it is compared to the lack of a regulatory intervention by the EU regarding conditions for entry and the matching of demand and supply of labour for citizens of third countries.¹⁹ Apart from a core of rights that are identified by the EU legislator from time to time, and especially the principle of equal treatment between workers from third countries and national workers of the host country (Carrera et al. 2011), different categories of third-country national workers have been provided with different statutes by considering Directive Nos. 2009/50 and 2014/36 (Herzfeld Olsson 2014). As a result, the asymmetries between migration policy and labour market across EU Member States remain considerable and the European policy on immigration is still uneven given the strong resistance to cede powers for defining the flow of entry and regulation of migration (Engblom 2011).

THE EU GOVERNANCE OF SEASONAL AND TEMPORARY MIGRATION

In 1936, John Steinbeck wrote a series of articles for the newspaper the *San Francisco News*: the essays were focused on the seasonal workers in the fruit and cotton plantations of rural California with the scope of showing to the world the situation in the slums of Hooverville and Little Oklahoma during the Great Depression. The final paper was collected in a short essay-report: *The Harvest Gypsies* (Steinbeck [1936] 1996). The articles in the *San Francisco News* were published with some pictures by Dorothea Lange, famous for her legendary *Migrant's Mother* photo from 1936, which documents the same situation described by Steinbeck.

Steinbeck's pages on the USA of the 1930s still resonate in accounts of labour migrants' living conditions around the world.

The countries mainly interested by the phenomenon of immigration for economic reasons, especially in times of crisis, are extremely vulnerable to the rise of strongly 'protectionist' temptations on the domestic labour market (but also on the welfare system) with the aim of

trying to preserve employment prospects and guarantees for natives compared to foreigners. At the same time, these phenomena also highlight a crucial and unresolved asymmetry, since the right to be able to leave one's own country does not correspond at all to an equal and symmetrical right to freely enter another (Costello and Freedland 2014: 1).

Such an approach, however, which has emerged with particular force in many EU Member States after 2008 and during the years of the most recent global economic crisis, appears to be undermined by a misunderstanding of the reality of the migration phenomena.

Looking at the significant segmentation of the labour market, well known not only to sociologists but also to labour lawyers, in many European national contexts it is correct to use the expression 'parallel' labour markets, whereby migrant workers are frequently called upon to occupy jobs that are progressively neglected and, if possible, abandoned by natives, as they are characterised by tasks that can be classified under the famous '3Ds': Dirty, Dangerous, Demeaning.

If immigration for work purposes is mainly seasonal (e.g., the widespread use of labour in agriculture or in tourism and services), the intrinsic temporary nature of the migration flow makes the relationship between the third-country national and the host state even more precarious, with the negative consequences for seasonal workers to reach a minimum level of social integration, which is an essential basis for the awareness and exercise of their rights. All these aspects enhance the segmentation of the labour market, drawing the attention to the security of EU citizens.²⁰

In addition to the international instruments developed over the last few decades, the expansion and increasing complexity of labour migration require the EU to elaborate new tools to govern the phenomenon: indeed, the EU has a shared competence for developing a common immigration policy and can adopt binding legislative acts. According to its competencies, the EU 'shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States', albeit 'the right of member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed'. This is an historical accomplishment. Following the Treaty of Amsterdam (1997), migration and asylum became an EU competence, while the Tampere European Council (1999) called for a common EU policy on migration and asylum. This step marked the end of the EU's opposition to labour migration from third countries. A new immigration strategy was required to increase labour demand in the EU in the light of demographic changes and shortages of skilled labour.

At that time, guidelines were drawn up for the Community's migration policy, concerning essential principles such as fair treatment, integration of foreigners, common supervision of migration flows, and support for partnership with the countries of origin.

However, the discourse begins to change with the impact of the terrorist attacks of 2001: instead of 'solidarity' and 'integration', the emphasis shifted to 'security', 'reception capacity' and 'border control'.

The Lisbon Treaty (signed on 13 December 2007 and entered into force on 1 December 2009) brings about what can be described as the unification of migration policies. Title V of the Treaty on the Functioning of the European Union titled 'Area of freedom, security and justice' provides for the development of a common policy on immigration, asylum and external border control (Art 67), identifying the European Council as the responsible body in defining the strategic guidelines for planning in this field and for clarifying that immigration

policies must be inspired by the principle of solidarity and fair sharing of responsibilities among the EU Member States (Art 80). It reveals the will to clearly distinguish the sphere of immigration motivated by economic reasons from the other policies focused on asylum seekers (Art 78 TFEU). Moreover, even after the Lisbon Treaty, an essential element of any migration policy, such as the determination of the number of entries, firmly remains in the hands of the states and is governed only by them.

This shows how it is difficult to draw a line between economic and humanitarian migration, with the parallel and inevitable attempt by many migrants to try to use the channels of humanitarian protection to overcome the obstacles and limitations to the possibilities of entry for employment reasons.

From this point of view, the EU defines the conditions of entry and residence of third-country nationals in several acts – the rights of legally residing citizens, adopting measures against irregular immigration and trafficking in human beings, but it continues to entrust the power to determine how many third-country workers can be admitted (with possible entry quotas) to Member States. Article 79, § 5, of the TFEU provides that the above-mentioned provisions do not affect the right of Member States ‘to determine the volumes of admission of third-country nationals coming from third countries to their territory in order to seek employment or self-employment there’. Finally, it should be noted that Article 153 of the TFEU provides that the Union may act in relation to the conditions of employment of legally residing third-country nationals, specifying that this kind of action requires unanimity. Therefore, in light of the current EU legislation and the persistent centrality of the political and regulatory choices of the different Member States, at the moment it seems very difficult to assume the possibility of establishing a new access paradigm for a European-level regulation of access to employment for economic migrants.

This does not mean that there have not been important regulatory measures. Directive 2014/36/EU focused on the conditions of entry and residence for foreign workers for seasonal job in order to facilitate a more orderly and effective management of these flows that is useful and important for many economic sectors, starting from agriculture, ensuring adequate protection and decent living conditions for these workers, who are particularly subject to the risk of labour exploitation.

It is well known that EU citizens have the right to move freely from one EU country to another to work without a work permit. Non-EU citizens may have the right to work in an EU country or to be treated with regards to working conditions in comparison with EU nationals. These rights depend on their status as family members of EU nationals and on their own nationality.

The first aim of the EU Directive was to provide a legal *status* for temporary workers who wished to return to their countries of origin, providing at the same time a pathway leading eventually to a permanent status for those who wished to stay. The idea was to provide for admitted workers the same rights and responsibilities as the EU citizens, in a progressive way according to the length of stay. These aspirations regarding labour migration were part of a general EU plan for developing a common asylum and migration policy.

Beyond the consolidated phenomena of intra-EU posted workers, there is room for a special focus on EU seasonal workers and third-country seasonal workers in the EU. In the latter case, the third-country nationals legally work and reside in a Member State as EU seasonal workers and could be posted by their employer to another Member State becoming seasonal posted workers, according to Directive 96/71/EC. Given their degree of vulnerability to pre-

carious working and living conditions, the Commission and Council have sought to extend the approach of the Directive covering European workers to third-country nationals entering the EU as short-term seasonal workers or even inter-corporate transferees. The pandemic has exacerbated their conditions.

The scholarly debate on the governance of migration flows is focused on temporary migration (Howe and Owens 2016). A comparative overview on migration studies analyses the relationship between temporary migration and regulatory techniques according to the main interests involved in migration phenomena: those of the migrant, the migrant's home state, and the host state.

In light of the different interests at stake and according to some reconstructions, temporary migration implies a reiteration of outward and return movements from the country of origin to the country of destination. This movement could be read in positive terms because it can ensure, respectively: to destination states the possibility of filling labour shortages; to states of origin the possibility of reducing labour surpluses and providing the local labour market with new skills and capital flows, thanks to the cyclical return of migrants; and finally, to migrants, the possibility of gaining experience and receiving higher wages while maintaining significant ties with the country of origin (Hugo 2013: 6ff.). Besides, there is a different perspective that counters this reconstruction aimed at highlighting the virtuosity of temporary migratory movements, especially if circular: following the other approach, temporary or cyclical migration takes the features of a vicious circle or, again, a dead end: a real *dead end* (Wickramaskara 2011).

Temporary migration can be traced back to a positive strategy or a vicious circle depending on the concrete regulatory framework. In fact, alongside the hypotheses in which temporary migration provides forms of transition to a longer-term migratory *status*, there are others in which temporariness does not allow for channels in the direction of a stable relationship with the destination country. The second option for migrants – that is a regulation of seasonal work that does not allow access to stable positions – is penalising given that such legislation ends up, inevitably, exacerbating the vulnerability typical of migratory status, depending on the needs of the host labour market.

In the EU order, the aspect related to the temporariness of migrant entries for several years has been an issue looking at the governance of legal migration. Through the Seasonal Work Directive No. 2014/36/EU, the legislator's choice goes in the direction of a closed experience, or, at most, a potentially repeatable one but not suitable to pre-establish a channel of access towards a more durable residence permit.

Given the decreasing availability of labour workforce within the Union together with the emergence of a more permanent need for labour workforce cause a structural need for seasonal workers, likely to steadily increase; this is the crucial purpose of European regulation in introducing 'incentives and safeguards to prevent [...] temporary stay from becoming permanent' (Art 7, Directive 2014/36/EU). The aim of preventing the extension of stays is becoming a priority and it is demonstrated by what has happened looking at the lack of cyclical/circularity perspective of temporary migration. We refer to the circumstances where, during the approval process of the Directive – very long and full of obstacles – the intention to provide a regulatory tool to set up (also) circular migration, through the provision of multi-seasonal permits (Art 12, proposal Directive COM[2010] 379) has been diluted in the mere provision of forms of re-entry facilitation, moreover devolved to the mere discretion of Member States (Art 16, Directive No. 2014/36).

Due to the theoretical goal of the rules devoted to the low-skilled workforce, the regulation on seasonal work is differently characterised in comparison to other multiple channels of access to the labour market by third-country nationals, not least with respect to highly skilled workers.

EMERGING QUESTIONS AND LESSONS FROM THE PANDEMIC

The Covid-19 pandemic has affected international migration, with many workers stranded in host countries without work or obliged to go back home. Simultaneously, seasonal migration has been greatly altered by Covid-19 mobility restrictions. More specifically, migrant workers who are engaged in seasonal employment have suffered an immense blow as a result of the enforcement of lockdown measures, which further increased the uncertainty of their livelihoods and of the welfare and economic security of their households in their countries of origin. Mobility restrictions introduced due to the Covid-19 pandemic have prevented seasonal workers from travelling and earning incomes abroad; as a consequence, there has been a decrease in remittances and a reduction in livelihoods. The decline in remittances is still having a knock-on effect on local economies and, most importantly, on the livelihoods of the families of migrant workers. Reduced mobility due to Covid-19 restrictions prevented migrant workers from leaving their areas of origin: as a result, there is much more labour supply, on the one hand, and the rise of unemployment, on the other. For example, before the crisis, increasing outflows were registered in the Eastern Partnership, a region chronically affected by human capital depletion because important sectors of the population live abroad. During the Covid-19 phase, due to lockdowns, travel bans, and social distancing, the migration flows from these countries were downsized and a third of the Eastern Partnership region's emigrants returned home over the course of 2020 (World Bank 2020). By examining a panel of data (EBRD 2020) it was shown the important effect of Covid-19 also had on the economic development of the Eastern Partnership countries in terms of productivity, mobility, health and unemployment (Indoitou 2021).

The shock triggered by the pandemic has underlined more than ever how important it is to support the cooperative approach both at EU and international level. A minimum outcome to raise the level of cooperation between governments of host countries and countries of origin is focused on identifying labour force needs and organising labour migration in fields with the highest demand. However, the strengthening of partnerships between countries of origin and destination to meet political, economic and social interests should achieve another desirable outcome aimed at raising the quality level of cooperation: the compliance with international standards on the human rights of migrants as a prerequisite for the definition of migration management policies. By enhancing this approach, and the decent work philosophy that is behind it, we can maximise the benefits of well-organised migration, both seasonal or not, and protect migrant workers from exploitation in foreign labour markets. Along this path the role of the social partners is not secondary (ETUC-ITUC 2018).²¹

NOTES

1. Although the chapter is the result of a joint research, Daniela Comandé is the author of §3, §5, and Federico Siotto of §2, §4 whereas §1 was written jointly by the authors.
2. ILO, *Global Estimates on International Migrant Workers. Results and Methodology*, 2021: 20; the publication refers to UNDESA evaluation at <https://www.un.org/development/desa/pd/content/international-migrant-stock>.
3. Target 10.7.
4. Target 8.8.
5. See the ILO, *Guidance On Bilateral Labour Migration Agreements*, 2022, which is aimed at improving consistency in the implementation of global standards.
6. See the investigative report by *The Guardian* on *Qatar beyond the football*, at <https://www.theguardian.com/news/series/qatar-beyond-the-football>.
7. <https://www.bwint.org/cms/dribble-or-goal-bwi-pushes-for-proposals-to-complete-labour-reforms-in-qatar-2379>. Recently, the ILO and Qatar have signed a new four-year programme in order to improving labour reforms (March 4, 2024), see at <https://www.ilo.org/resource/news/ilo-and-qatar-sign-new-4-year-programme-advance-labour-reforms>.
8. See Chapter 21 in this Handbook.
9. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, adopted by the UN General Assembly with the Resolution 45/158 without a vote on 18 December 1990 (UN, ICRMW 1990) and entered into force on 1 July 2003, see Art 5.
10. See the International Organization for Migration (IOM), *Glossary on Migration*, 2019, n. 34, p. 116, at https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf; see also the Recommendation 1755 (2006) Human rights of irregular migrants adopted by the Parliamentary Assembly of the Council of Europe focusing on the difference between irregular migrant and illegal migrant.
11. See the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families International*, cited, Art. 5(b).
12. Geneva Convention, 1951 relating to the Status of Refugees; ILO Convention 1949 [No. 97] and ILO Convention 1975 [No. 143] accompanied by two non-binding recommendations (ILO Recommendation 1949 [No. 86] and ILO Recommendation 1975 [No. 151]). The ILO also contributed inputs to the negotiations, over a ten-year period, of the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) – a core international human rights instrument that entered into force in 2003. The UN General Assembly adopted Resolution 45/158 without a vote on 18 December 1990, cit. More recently, on 10–11 December 2018 during the Intergovernmental Conference in Marrakesh (Morocco) there was adopted the *Global Compact on Safe, Orderly and Regular Migration* (together with the *Global Compact on Refugees*) by the majority of UN Member States without the EU Member States, and the adoption was followed closely by formal endorsement by the UN General Assembly on 19 December. This is the first intergovernmentally negotiated agreement under the auspices of the United Nations. All these international sources make a very clear distinction on the basis of the reasons why people leave their country of origin.
13. Eurodac Regulation, 2013; Procedures Directive, 2013; Qualification Directive, 2011; Dublin Regulation III, 2013; Directive laying down standards for the reception of applicants for international protection 2013, on the one hand, the Treaty on European Union (TEU), Article 3(2); the Treaty on the Functioning of the European Union (TFEU), Article 21; TFEU Titles IV and V; Charter of Fundamental Rights of the European Union (CFREU), Article 45; Directive

- 2004/38/EC on the right of EU citizens and their families to move and reside freely within the EU, on the other.
14. COM (2018) 168, Brussels, 21 March 2018, Proposal for a *Council Decision authorising the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the field of development cooperation*.
 15. ILO, *Migration, human rights and governance*, Handbook for Parliamentarians n. 24, 2015, 66 ss., where there is a list of elements that could be implemented by a comprehensive bilateral labour migration agreement, such as competent government authority, form of notification of job opportunities, way for a pre-selection and final selection of candidates, medical examination, entry visas, residence and work permits, transportation and conditions of transport (both outgoing and return), norm for equality of treatment and non-discrimination, contracts of employment, terms of employment, including possibilities to change employment, working conditions, including occupational safety and health, trade union rights, social security, taxation, accommodation, family reunification, education and vocational training, activities of social and religious associations, supervision of living and working conditions, remittances, dispute settlement procedures, return and reintegration, the applicable law and place of jurisdiction, etc. Many of these elements are cited in the *Model Agreement on Temporary and Permanent Migration for Employment*, see the Annex to the *ILO Migration for Employment Recommendation* (Revised), 1949 (No. 86), but often a single bilateral agreement do not regulate all of these areas of interest.
 16. United Nations, *Global Skill Partnerships*, Center for Global Development (CGDEV), 13 December 2020.
 17. ILO, IOM, UNESCO, IOE and ITUC.
 18. Par. 15 (f) of the GCM: '*Human rights*. The Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination. By implementing the Global Compact, we ensure effective respect for and protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance, against migrants and their families'.
 19. See Chapter 15 in this Handbook.
 20. See Chapters 3 and 4 in this Handbook.
 21. See Chapter 10 in this Handbook.

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