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Temporary Labour Migration: A Legal and Economic Analysis of Seasonal Workers

Study of the Italian and Australian cases

Supervisor
Ch. Prof. Sara de Vido

Assistant supervisors
Ch. Prof. Giuseppe Pascale
Ch. Prof. Francesco Lissoni

Graduand
Doranna Manni
Matricolation Number
857669

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Alla mia amica Elisa,
che da lassù mi ha dato la forza di arrivare fin qui.

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Abstract

L'avvento della pandemia di Covid-19 nel 2020 ha evidenziato un'importante questione sui lavoratori stagionali e sul loro ruolo nell'economia dei paesi di impiego. Infatti, a causa dei blocchi agli spostamenti dovuti alla pandemia, l'impiego dei lavoratori stagionali è stato temporaneamente sospeso, causando gravi carenze di manodopera soprattutto nel settore agricolo e portando conseguentemente alla mancanza di prodotti agroalimentari sugli scaffali dei supermercati. Questo evento ha aperto uno spunto di riflessione sull'importanza dei lavoratori stagionali per i paesi di origine, di destinazione e per i lavoratori stessi. Difatti, la loro rilevanza economica è spesso sottovalutata, se non ignorata, come anche la necessità di regolamentare i flussi migratori e l'impiego dei lavoratori. Difatti, i lavoratori stagionali spesso lavorano in condizioni di irregolarità, abuso e discriminazione.

Questa tesi ha pertanto lo scopo di dimostrare empiricamente la rilevanza economica dei lavoratori stagionali e, più generalmente, della migrazione temporanea: tale fenomeno è infatti più diffuso di quanto comunemente ritenuto e i suoi vantaggi socio-economici sono frequentemente trascurati. Inoltre, date le circostanze di irregolarità e sfruttamento a cui spesso i lavoratori stagionali sono sottoposti, si vuole analizzare la produzione giuridica per la tutela dei lavoratori stagionali, sia nell'ambito del diritto internazionale, sia in ambito regionale, con riferimento all'Unione Europea e alla regione del Pacifico, per comprenderne gli aspetti più critici e rilevanti. Le regioni geografiche considerate sono l'Unione Europea e la regione del Pacifico: per un'analisi più dettagliata ed esplicativa del fenomeno in questione vengono infatti analizzate l'Italia e l'Australia. I due Paesi rappresentano due esempi molto validi, per quanto diversi, sull'impiego dei lavoratori stagionali e della loro regolamentazione.

La ricerca dunque si è focalizzata sulla lettura e l'esaminazione dei trattati multilaterali adottati in seno all'Organizzazione Internazionale del Lavoro e alle Nazioni Unite con lo scopo di evidenziarne l'evoluzione, le caratteristiche peculiari e le eventuali lacune di contenuto. Successivamente, per la parte di analisi economica, alcuni interessanti studi hanno trattato della rilevanza dei lavoratori stagionali per i paesi di origine, per i paesi di impiego e per i lavoratori stessi, evidenziando come, pur non essendo molto studiati in ambito economico, i lavoratori stagionali rappresentino la giusta soluzione per la temporanea domanda di lavoro flessibile e a basso costo. Tuttavia, la ricerca nell'ambito economico è stata più complicata e meno accessibile. Raramente la letteratura accademica si è concentrata sullo studio dei lavoratori stagionali,

poiché registrare i loro movimenti e tener conto del contributo del loro lavoro nell'economia del paese di impiego è un compito arduo. Inoltre, la loro frequente condizione di irregolarità rende la ricerca ulteriormente difficoltosa. Non sempre le autorità e le istituzioni addette al monitoraggio e allo studio delle condizioni di impiego dei lavoratori stagionali riescono a registrare i dati necessari con successo e regolarità, per esempio, trovare fonti e statistiche affidabili nell'ambito italiano è stato a dir poco difficoltoso.

Nonostante queste complicazioni, d'altronde normali nell'ambito della ricerca, i risultati ottenuti hanno confermato l'iniziale quesito: la migrazione temporanea è un fenomeno importante che genera benefici dal punto di vista economico e sociale per tutti gli attori coinvolti nel processo migratorio e, allo stesso modo, l'impiego stagionale di lavoratori stranieri consiste in una efficace e adeguata soluzione per momentanee carenze di forza lavoro nell'economia di un paese.

In particolare, il primo capitolo della tesi si concentra *in primis* sull'analisi dei trattati multilaterali conclusi tra gli Stati Membri dell'Organizzazione Internazionale del Lavoro e delle Nazioni Unite. Le prime convenzioni sono caratterizzate da un contenuto più breve, in cui non viene nemmeno fatto diretto riferimento ai lavoratori stagionali. Infatti, tali strumenti giuridici parlano più generalmente della tutela dei lavoratori migranti senza distinguerne le sottocategorie. I lavoratori stagionali vengono citati per la prima volta nella Convenzione internazionale delle Nazioni Unite sulla protezione dei diritti di tutti i lavoratori migranti e dei membri delle loro famiglie del 1990, che peraltro è l'unico strumento adottato in seno alle Nazioni Unite sulla protezione dei lavoratori migranti. Invero, tutti gli altri strumenti internazionali sono stati conclusi sotto l'egida dell'Organizzazione Internazionale del Lavoro. Le convenzioni vengono analizzate in ordine cronologico, rendendo evidente come il diritto internazionale si sia sviluppato nel corso dei decenni in merito alla tutela e alla regolamentazione dei lavoratori migranti e delle loro famiglie. Gli strumenti più recenti presentano un contenuto più lungo e dettagliato e le loro clausole legiferano anche sugli aspetti più tecnici del viaggio e dell'assunzione dei lavoratori migranti e, più precisamente, stagionali.
Un'importante questione riguarda la tutela dei lavoratori migranti che viaggiano e vengono assunti in condizioni di irregolarità. Come precedentemente accennato, i lavoratori irregolari rappresentano una buona parte dei lavoratori migranti e la loro tutela è oggetto di dibattito ancor'oggi. Molti sostengono che la tutela dei lavoratori clandestini fomenti la perpetrazione delle assunzioni irregolari, essendo vista come un implicito consenso alla loro messa in atto. Altri ritengono invece che i lavoratori

irregolari siano sottoposti a sfruttamento e abusi in modo più grave e frequente dei lavoratori regolari, pertanto la loro tutela è fondamentale per cessare la violazione dei loro diritti. Nonostante questo dibattito ancora non sia stato risolto, la Convenzione del 1990 è tra i primi strumenti internazionali che dispongono la protezione dei lavoratori illegali.
Un elemento comune a tutti gli strumenti multilaterali analizzati è che gli Stati ratificanti sono in maggioranza paesi in via di sviluppo con forti tassi di emigrazione di individui in età lavorativa. Ciò non dovrebbe stupire, dal momento che è normale che tali paesi vogliano proteggere i propri cittadini assunti come lavoratori migranti; tuttavia, questo elemento rende evidente come gli Stati sviluppati con alti tassi di immigrazione di lavoratori non pongano tra i loro principali interessi la tutela di tali individui, nonostante questi rappresentino una buona parte della loro forza lavoro.
La seconda sezione del capitolo riguarda gli accordi multilaterali adottati a livello regionale. In questo ambito, essendo l'Italia Stato Membro dell'Unione Europea, la regolamentazione a livello regionale è legiferata dalla Direttiva del Parlamento europeo e del Consiglio sulla tutela dei lavoratori stagionali del 2014. Purtroppo per l'Australia non vige la stessa circostanza, pertanto la regolamentazione dei lavoratori stagionali nella regione del Pacifico è disciplinata dal *Seasonal Worker Programme*, un'iniziativa del Governo australiano che tuttavia ha applicazione regionale attraverso la stipulazione di Protocolli d'Intesa con i Paesi delle isole del Pacifico.

Il secondo capitolo si concentra sulla definizione di lavoratore stagionale che emerge dall'analisi degli strumenti multilaterali analizzati in precedenza. Pertanto, un lavoratore per essere definito stagionale deve migrare esclusivamente per motivi di lavoro in un paese che non coincide con il suo paese di origine; il suo impiego deve riguardare mansioni basate sul decorso delle stagioni, come per esempio nell'ambio turistico o agricolo; si deduce, infine, che la migrazione del lavoratore stagionale sia necessariamente temporanea e pertanto concluso il periodo di impiego, l'individuo debba rientrare nel paese di origine.
La particolare categoria delle lavoratrici migranti è soggetta ad ulteriori forme di discriminazione, soprattutto sulla base del genere. Infatti, la Convenzione di Istanbul del 2011 adottata in seno al Consiglio d'Europa dispone la protezione delle donne dalla violenza di genere e in ambito domestico. Pur non riferendosi nella fattispecie alle donne lavoratrici migranti, la Convenzione di Istanbul rappresenta un passo importante e fondamentale nella presa di coscienza della comunità internazionale sull'importanza della tutela delle donne da qualsiasi forma di violenza e discriminazione di genere.
Il secondo capitolo infine si conclude con lo studio del caso di prassi dei

braccianti messicani conosciuti come *braceros*. Infatti, tra il 1942 e il 1964 il *Bracero program* ha consentito l'arrivo di complessivamente quattro milioni e mezzo circa di lavoratori stagionali messicani negli Stati Uniti. Il caso dei *braceros* messicani è emblematico e unico nel suo genere, essendo uno dei programmi di durata e misura più elevate nella storia. Esso fornisce peraltro un chiaro esempio di come l'attuazione di restrizioni all'immigrazione dei lavoratori nel paese di impiego non porti ad un loro calo numerico bensì renda la loro migrazione irregolare e permanente e pertanto non più temporanea.

Se i primi due capitoli si concentrano sullo studio dei lavoratori stagionali da un punto di vista giuridico, il terzo capitolo ne compie un'analisi prettamente economica. Più precisamente, si occupa della dimostrazione empirica dei contributi positivi della migrazione temporanea e circolare sui paesi di origine, di destinazione e sui migranti stessi. Il punto di forza della migrazione temporanea è proprio la sua temporaneità, che consente ai lavoratori di decidere quanto rimanere nel paese di impiego e in quale momento reputano più conveniente tornare nel paese di origine. Le decisioni di ciascun individuo di migrare temporaneamente sono basate su diverse variabili, dall'accumulazione di capitale umano, al guadagno di stipendi più alti nel paese di destinazione.
Per quanto riguarda la migrazione circolare, invece, i lavoratori stagionali ne sono l'esempio più frequente, poiché spesso tornano a lavorare nello stesso posto nel corso degli anni, seppure sempre su base stagionale. Come la migrazione temporanea, anche la migrazione circolare ha conseguenze positive sulle economie dei paesi coinvolti e sull'accumulazione di ricchezza e competenze per i lavoratori migranti.
La parte conclusiva del capitolo esamina le conseguenze, spesso inaspettate, di controlli più severi ai confini e di restrizioni più alte all'immigrazione, che non solo riducono molti lavoratori a migrare in stato di irregolarità ma anche li costringono a rimanere nel paese di impiego, mutando la natura della loro migrazione da temporanea a permanente.

In conclusione, l'ultimo capitolo analizza dettagliatamente il caso italiano e quello australiano, esaminando gli accordi bilaterali che i due stati hanno stipulato con gli altri paesi per la regolazione dei flussi migratori stagionali e le implicazioni economiche che tali flussi hanno sull'economia italiana e australiana. Nonostante le già menzionate difficoltà riscontrate nella ricerca di fonti attendibili ed esaustive, è stato dimostrato che per entrambi i paesi l'impiego di lavoratori stagionali aumenta la produttività delle aziende, contribuisce allo sviluppo di tecniche innovative e di nuove conoscenze, essendo i lavoratori stagionali veicoli per la trasmissione di competenze ed esperienza tra il loro paese di origine e quello di impiego.

Affinché la ricerca futura consenta risultati migliori e studi più approfonditi, la regolamentazione dei flussi migratori stagionali e la valutazione delle loro implicazioni economiche dovranno basarsi su dati più precisi e registrati con maggiore regolarità.

Introduction

Nowadays, temporary labour migration and seasonal workers are widespread and highly complex phenomena. As a matter of fact, year 2020 revealed how the temporary suspension of seasonal employment due to the Covid-19 pandemic caused considerable shortages in the economies of host countries. This event represents the starting point of the reflection about the general non-consideration paid to the contribution of seasonal employees' work and the exploitative conditions they are usually subjected to. Indeed, this thesis work aims at providing empirical evidence about temporary labour migration and seasonal workers' significance both under a legal and an economic perspective.

Temporary labour migration is often undervalued because its temporary nature makes difficult the assessment of its effects on the countries involved. Besides, as far as seasonal workers are concerned, their work often occurs in the shadow of lawfulness, causing the impossibility to properly protect them in workplaces and evaluate their contribution to the host countries economy. Consequently, the present work addresses such issues in order to clearly understand which are the instruments that regulate the protection of seasonal workers at international and regional level, as well as to empirically assess their economic profitable effects for migrants themselves, countries of origin and countries of employment as well.

For this purpose, the research has consisted of the examination of all multilateral treaties concerning the governance of migrant and seasonal workers, stressing their main features and provisions. Besides, empirical researches on the economics of temporary and circular migration are studied in order to evaluate their economic implications.

More precisely, the first chapter provides an examination of all the multilateral conventions adopted within the framework of the International Labour Organisation and of the United Nations, as well as at regional level, i.e., in the European Union and in the Pacific region. The aim is to introduce and analyse the instruments that currently regulate and safeguard migrant workers and, more precisely, seasonal workers flows.

The second chapter focuses on the definition of seasonal worker, underlining the common elements that emerge from the treaties analysed in the previous chapter. Moreover, the particular category of women migrant workers is described, as they suffer from multiple forms of discrimination that worsen their conditions in host countries' workplaces. The last paragraph of the

chapter examines the Mexican braceros case, which is an excellent and historically the greatest example of guestworker programme.

Subsequently, the focus shifts on the economic analysis of temporary and circular migration, in particular it examines their implications both on sending and receiving countries. In such wise, the importance of temporary labour migration becomes evident, as well as the significance of seasonal workers, who mainly engage in circular migratory flows. Furthermore, the effects of borders controls and restrictions on migrant inflows are studied, in order to understand if their enforcement actually represents a valid solution to permanent migration in destination countries.

Lastly, the fourth chapter considers the Italian and Australian study cases, therefore focusing on their two precise domestic circumstances for what regards seasonal workers employment and its effects on their economies. More precisely, the chapter is divided into two sections: the first one concerns the cooperation at bilateral level between Italy and Australia and their respective partner countries; the second section studies the effects of seasonal workers' employment on the two countries' economies and labour markets.

1. The international protection of seasonal workers

When reference is made to seasonal workers' protection, it is crucial to underline that seasonal workers' rights are both human and workers' rights. Therefore, their protection falls under different instruments, which cover various matters concerning seasonal workers' status. This chapter brings into focus the instruments that directly recall seasonal workers' safeguard at international and regional level, analysing for the latter the European Union and the Pacific region.

In 1947 an agreement between the International Labour Organisation (ILO) and the United Nations established the separation between their competences: the competence of the ILO comprised the international protection of migrants' rights in their quality as workers, while the competence of the United Nations included the protection of migrants in their quality as aliens.[1] This explains the reason why in the next pages the analysis regards mainly ILO Conventions. The only instrument adopted by the United Nations concerning precisely migrant workers' safeguard is the 1990 International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (ICRMW).

The awareness related to the adoption of international instruments for the achievement of common action on labour conditions raised during the first postwar period: workers' organisations pressure and the awe caused by the October Revolution urged governments to cooperate and jointly coordinate issues involving employment conditions and the protection of migrant workers.[2] Accordingly, since the very beginning, the International Labour Conference's scopes were two-fold: on one hand, it aimed at regulating migratory flows, while on the other the intention was to protect migrant workers, a particularly vulnerable category of workers.[3]

The primary instruments described in the following pages regulate the protection of migrant workers and do not refer directly to seasonal workers. Only the most recent Conventions provide the definition of both migrant and seasonal workers. Seasonal workers are indeed a group included in the wider category of migrant workers, which comprise, for instance, frontier workers and seafarers, too. As a matter of fact, seasonal workers' relevance has been examined in depth in the last two decades, and the legal literature has

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[1] Michael Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis," International Migration Review 25(4) (1991): 687–97, doi.org/10.2307/2546840, p. 693.
[2] *Ibid*., p. 688.
[3] Cécile Vittin-Balima, "Migrant Workers: The ILO Standards," *Labour Education* 4(129) (2002): 5–11, www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_111462.pdf., p. 5.

consequently developed, raising awareness on this smaller category of migrant workers only in the most recent instruments.

1.1 International multilateral treaties

In the next pages, multilateral conventions are presented and examined in chronological order. Before introducing the first multilateral agreement, a crucial premise is nevertheless needed.

The analysis pertains to instruments belonging to both hard and soft law. In particular, ILO Conventions are accompanied by a related Recommendation. Recommendations are not open to ratification as Conventions are, but give support and advice to policies, legislation and practice. They are both instruments adopted by the International Labour Conference.[4] ILO Recommendations are a good example of what is called soft law. Instruments belonging to soft law are not binding and the legal pressure of their provisions is lower than the one of hard law arrangements.[5] Other examples of soft law documents are gentlemen's agreements, joint statements and codes of conduct. The main features of soft law agreements are: (i) the States' will to commit themselves through the conclusion of such non-binding arrangements; (ii) the contents of their provisions are diverse; (iii) they are not systematically published and pursue scopes of different kind and nature; (iv) last, but not least, in the case of non-compliance with their provisions, States are not sanctioned.[6] Despite these distinctive elements, soft law arrangements belong to international law as hard law instruments do, and countries are increasingly adopting them to regulate their international relations. As a matter of fact, the advantages of soft law commitments are manifold: they widen the enforcement scope of international law, easing the cooperation between States and promoting the formation of new international non-written rules, such as customary law or general principles of international law. Moreover, through the adoption of soft law arrangements, States avoid the solemn, long and complex process of conclusion of binding treaties. Consequently, in the case of non-compliance with the clauses, States' international responsibility is not claimed and, as mentioned before, no sanction is applied. Soft law instruments

[4] International Labour Organisation, "Handbook of Procedures Relating to International Labour Conventions and Recommendations," 2019, www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_697949/lang--en/index.htm., p. 3.
[5] Dominique Carreau and Fabrizio Marrella, *Diritto Internazionale. Seconda Edizione* (Giuffrè Editore, 2018), p. 209.
[6] *Ibid*., pp. 214-215.

may also act as tests for the adoption of subsequent hard law treaties, as if they were their first stage. As far as the "material" benefits of soft law are concerned, they are commonly used in more responsive or dynamic international contexts, such as political or economic relations, since their informal nature makes them more adaptable.[7] Although soft law agreements cannot be considered as treaties, which require States' ratification, they are inferior to them solely on a formal basis, not material. The non-binding nature of their clauses is indeed decided by the contracting parties.[8]

Given this brief but important premise on the relevance of international soft law agreements, therefore, it results clear that ILO Conventions and Recommendations must not be considered at the same level in the hierarchy of international law instruments. On a formal and juridical basis[9] Conventions belong to a higher range than Recommendations, even if they deal with the same issue. This is due to the fact that Conventions must be ratified in order to enter into force. Recommendations provide instead a further non-binding set of articles, which States may refer to without ratifying them.

Migration for Employment Convention (Revised), 1949

The Migration for Employment Convention was adopted by the 32nd International Labour Conference on 8th June 1949 in Geneva and entered into force on 22nd January 1952. It consists of a revision of the 1939 Migration for Employment Convention on migrant workers, which had not been ratified by any State still in 1946, and for this reason did not enter into force.[10] The Convention comprehends three different Annexes, which can be all or any excluded from the ratification but may be accepted later by Governments. Currently, fifty-one countries have ratified the Migration for Employment Convention (Revised), some of them excluding one or more Annexes. Most of the ratifying States are migrant-sending countries, but also France, Germany, Italy, Norway and Spain ratified the Convention soon after it came into force, between the 1950s and the 1960s.[11] The provisions of the Migration for Employment Convention (Revised) are supplemented by the Migration for

[7] *Ibid*., pp. 213-214.
[8] *Ibid*., p. 221.
[9] As clarification, in this thesis work it is assumed that *juridical* means *compulsory*, i.e., the non-compliance causes the implementation of sanctions.
[10] Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis", p. 693.
[11] United Nations Treaty Collection, "Convention (No. 97) Concerning Migration for Employment (Revised 1949)" (Geneva, 1949), treaties.un.org/Pages/showDetails.aspx?objid=0800000280153c43&clang=_en.

Employment Recommendation (Revised), which was adopted in the same session of the International Labour Conference. These two instruments regulate the recruitment and employment of both temporary and permanent migrant workers, and it is often specified in the articles that all the measures provided must be respected at the departure from the country of emigration, during the journey and at the arrival in the country of immigration. The first article of the Convention states that each Member of the ILO which ratified the Convention shall make available on request to the International Labour Office and to other Members any information on national laws concerning migration and emigration for employment, as well as information on any agreement and special arrangements concluded by the Member on these issues.[12] This is important because it allows the ILO and the Member itself to understand whether the norms established by the international instrument improve the living and working conditions of migrant workers in the ratifying country at a greater extent or smaller than the national laws did. The definition of migrant for employment is provided at Article 11(1): "For the purpose of this Convention the term *migrant for employment* means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment."[13] Frontier workers, artists, members of liberal professions and seamen are not included, as stated by the second paragraph of the article. The provisions of the Migration for Employment Convention (Revised) are general, ensuring a more flexible and coherent set of standards for the organisation and protection of migrant workers and their journey. Both the Convention and the Recommendation strongly reiterate the principle of equality of treatment between migrants and nationals, and lifted the restrictions on access for migrant workers who are searching for employment in a foreign country.[14] The cooperation and coordination between Member States for which the Convention is in force is encouraged, as suggested by Article 10, which promotes the conclusion of bilateral agreements, especially if the number of workers migrating for one country to another is large.[15] Starting from Article 12 the conditions for the entry into force, denunciation and application of the Convention are established, with Article 17(4) specifying that the rights of migrant workers must be granted and not affected by the denunciation of the Convention if the migrant immigrated in the country of employment while the Convention and its Annexes were still in force.[16] Concerning illegal migrant workers and their protection, however,

[12] *Ibid*., Art. 1.
[13] *Ibid*., Art. 11.
[14] Vittin-Balima, "Migrant Workers: The ILO Standards."
[15] "Convention (No. 97) Concerning Migration for Employment (Revised 1949)", Art. 10.
[16] *Ibid*., Art. 17.

they are not considered nor in the provisions of the Convention, nor in the ones of the Recommendation. The only references made to illegal migration for employment are made in Annex I and II of the Convention, respectively at Articles 8 and 13: "Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties." The three optional annexes of the Convention deal with three different aspects related to migrant workers: the first Annex focuses on the recruitment, placing and working conditions of migrant workers in arrangements not sponsored by Governments; Annex II covers the same topic, but focusing on Government-sponsored arrangements for group-transfers, while the last annex, Annex III, regulates the conditions of importation and the exemption from custom duties for migrant workers' personal effects.[17] The Recommendation is supplemented by an Annex too, which provides the model for bilateral agreements, both on temporary and permanent migration for employment.

Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955

The Protection of Migrant Workers (Underdeveloped Countries) Recommendation was adopted on 22nd June 1955 at the 38th International Labour Conference session. Currently, this Recommendation is classified as instrument with interim status, which means that it needs to be examined at a later date, which has not been determined yet, in order to decide whether it should be withdrawn or not. Despite this, the 1955 Recommendation is an interesting and useful instrument to be analysed for different reasons. Firstly, although the Recommendation was adopted only three years later the 1949 Convention had entered into force and represents a completion of its clauses, it raised the interest of more states than the Migration for Employment Convention (Revised) did. As a matter of fact, countries that did not ratify the 1949 Convention like Austria, China, Iceland, the Russian Federation and the United States, to cite few of them, submitted this Recommendation to the competent authorities of their countries.[18] The reason why the 1955 Recommendation gained so much consent among the most powerful and developed countries in the world can be found possibly in the fact that it consists of an arrangement that does not need ratification and for this reason it is not a binding instrument. Member States' governments, therefore, through

[17] Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis.", p. 693.

[18] International Labour Organisation website, "Submission of R100 – Protection of Migrant workers (Underdeveloped Countries) Recommendation, 1955", url: www.ilo.org/dyn/normlex/en/f?p=1000:13300:0::NO:13300:P13300_INSTRUMENT_ID:312438, last seen on 10th December 2020.

the acceptance of its provisions, do not feel bound to them as they usually do with the clauses of a Convention. Secondly, the measures introduced by the Recommendation are very detailed and precise, covering in depth all the aspects of the journey and employment of migrant workers and promoting precise solutions to underdeveloped countries' problems.[19] For instance, Paragraph two provides a long and accurate definition of migrant worker:

> "For the purposes of this Recommendation, the term *migrant worker* means any worker participating in such migratory movements either within the countries and territories described in clause (a) of Paragraph 1 above or from such countries and territories into or through the countries and territories described in clauses (b) and (c) of Paragraph 1 above, whether he has taken up employment, is moving in search of employment or is going to arranged employment, and irrespective of whether he has accepted an offer of employment or entered into a contract. Where applicable, the term *migrant worker* also means any worker returning temporarily or finally during or at the end of such employment."[20]

The clauses of Paragraph 1 recalled in this definition concern the territories and countries to which the Recommendation can be applied: areas where the economic development caused appreciable migratory flows of workers, whose protection during the return journey or during the period of employment is less granted by the existing arrangements than the protection afforded by the Recommendation.[21] Thus, the definition provided in the Recommendation is greatly complete and refers precisely to the scope of the instrument. However, Paragraph 5 sums up in only one sentence the principle of non-discrimination: "Any discrimination against migrant workers should be eliminated"[22], without appealing to the commitment to fight against discriminatory policies, as other legal instruments do. Throughout all the paragraphs of the Recommendation the importance of arrangements concluded between the competent authorities of the States involved in the placing and employment of migrant workers is recalled, including the cooperation with workers' and employers' organisation, if there are any in the territories of application. It is also specified that all the measures introduced in the Recommendation should be carried out in accordance with national laws concerning migratory flows and only in the interests of the migrants, of their families and of the economies of the countries concerned. An interesting aspect is dealt at Section III, which

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[19] Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis.", p. 694.

[20] International Labour Organisation, "Protection of Migrant Workers (Underdeveloped Countries) Recommendation" (Geneva, 1955), Paragraph 2.

[21] *Ibid*., Paragraph 1.

[22] *Ibid*., Paragraph 5.

regards the measures to discourage migratory movements, when these are considered undesirable in the interests of the migrant. Such measures are suggested at Paragraph 17 and shall be designed to improve the living and working standards in the country of emigration, through the creation of new job opportunities, a more efficient exploitation of natural resources and through the development of the industrial sector. At the same time, in order to settle the lack of manpower in the country of immigration, the workforce should be used more rationally and productivity should be increased through a better organisation of the workload and better training of workers. This Section of the Recommendation focuses on the real causes that make workers fleeing their country in search for more opportunities and better working conditions. The inability of countries of immigration to exploit successfully their own resources compels the employers to search for foreign workers, while countries of emigration are uncapable to keep their workforce by increasing job opportunities and improving conditions in workplaces.

For what concerns irregular migration, Paragraph 18 suggests to conclude bilateral agreements so as to reduce illegal migratory movements, underlining at Paragraph 19 that governments should, as far as possible, attempt to guarantee the protection laid down by the Recommendation to workers migrating in irregular conditions. Another impressive principle introduced by Paragraph 37 of the Recommendation is the principle of equal opportunity for everyone, including migrant workers. Accordingly, the admission to skilled jobs should be open to everyone, without discrimination of any kind. Consequently, as stated by Paragraph 40, low-skilled workers shall be enabled to access to semi-skilled and skilled job, while qualified workers should have the opportunity to be admitted to jobs demanding specific competences.[23] In this paragraph the Recommendation recalls a right that should be recognised to each individual from all sections of the population, not just to migrant workers. The provisions in Paragraphs 45, 46 and 47 describe in detail the social security measures that shall be granted to migrant workers through appropriate arrangements. More precisely, Paragraph 46 contains a list of medical and social services that should be included in such arrangements, giving to competent authorities an accurate policy to implement for the protection and assistance of migrant workers during the period of employment.

To conclude, it results clear that the Protection of Migrant Workers (Underdeveloped Countries) Recommendation was adopted to provide a technical guideline for the protection and assistance of migrant workers. A crucial factor that contributed to its adoption was the increasing pressure of underdeveloped countries to start such technical cooperation. Consequently,

[23] International Labour Organisation, "Protection of Migrant Workers (Underdeveloped Countries) Recommendation" (1955), Paragraph 40.

the adoption of a recommendation appeared to be the best approach to respond to the growing heterogeneity of the ILO's constituency, creating a coherent system of provisions without altering national law.[24]

Discrimination (Employment and Occupation) Convention, 1958

On 25th June 1958 the 42nd International Labour Conference adopted the Convention concerning Discrimination in respect of Employment and Occupation, which entered into force about two years later, on 15th June 1960. The Convention has been ratified by 175 countries[25] and its provisions are integrated by the provisions of the Discrimination (Employment and Occupation) Recommendation, which gained a high consent among the ILO Member States too.[26] The Convention recalls in its preamble the Declaration of Philadelphia (1944) and the Universal Declaration of Human Rights (1948), which affirm the principles of non-discrimination and of equal opportunity for all human beings. The Convention itself consists of fourteen articles that promote the protection of all workers but no direct reference to migrant workers is made. However, this Convention is of key importance since it prohibits the discriminatory behaviours which migrant workers are often victims of in workplaces.[27] The first paragraph of Article 1 provides a precise definition of the term "discrimination", which shall include:

> "Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."[28]

It is also stated that the Member State may consult existing employers' and workers' organisations and other competent bodies to determine whether any distinction or preference is a discriminatory measure or not. On the other hand, any exclusion or distinction based on the proper requirements for a job is not

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[24] Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis.", p. 694.

[25] United Nations Treaty Collection, "Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation" (Geneva, 1958), treaties.un.org/doc/Publication/UNTS/Volume 362/volume-362-I-5181-English.pdf.

[26] International Labour Organisation website, "Submission of R111 – Discrimination (Employment and Occupation) Recommendation, 1958", url: www.ilo.org/dyn/normlex/en/f?p=1000:13300:0::NO:13300:P13300_INSTRUMENT_ID:312449, last seen on 15th December 2020.

[27] Vittin-Balima, "Migrant Workers: The ILO Standards.", p. 6.

[28] United Nations Treaty United Nations Treaty Collection, "Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation.", Art. 1(1).

considered discrimination.[29] According to Article 3, each ratifying country undertakes to pursue the cooperation with employers' and workers' organisations for the observance of the Convention, while adopting and promoting appropriate activities of vocational training and placement. Moreover, each ratifying Member shall indicate in its annual reports the action taken in pursuance with the provisions of the Convention.[30] Articles 4 and 5 maintain respectively that actions affecting a person involved in activities prejudicial to the security of the State or special measures adopted to satisfy the peculiar needs of persons requiring special assistance, should not be considered as discriminatory actions.[31] It results clear that the Convention provisions are explicit and intelligible in the definition and opposition of discriminatory behaviours in workplaces, considering that they are enriched by the clauses of the relating Recommendation. The Recommendation is divided into three parts: (i) definitions, (ii) formulation and application of policy and (iii) co-ordination of measures for the prevention of discrimination in all fields. The second part is certainly the most developed and begins with Article 2, stating that the prevention of discrimination in employment and occupation should be reached through national policies first. It provides indeed a detailed list of principles that should be included in such policies. Unlike the Convention, Article 8 of the Recommendation refers directly to migrant workers and recalls the Migration for Employment Convention and Recommendation (Revised) of 1949, regarding particularly the principle of equality of treatment and opportunity and the abolition of limitations of access to employment.[32]

Migrant workers (Supplementary Provisions) Convention, 1975

During the 1960s and 1970s international labour migration increased in Western Europe, as states witnessed great labour demand but did not intend to introduce permanent additions to their population. For this reason, migration policies were adopted to promote temporary immigration for labour.[33] However, together with the increase of labour migration, clandestine migration and discrimination spread, raising great concern and urging the International Labour Organisation to adopt new measures in order to contrast the issue.[34] All these matters led to the adoption of the Migrant Workers (Supplementary Provisions) Convention at the 60th session of the International

[29] *Ibid*., Art. 1(2).
[30] *Ibid*., Art. 3.
[31] *Ibid*., Art. 4 and 5.
[32] *Ibid*., Art. 8.
[33] Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis.", p. 694.
[34] *Ibid*., p. 695.

Labour Conference on 24th June 1975, which entered into force on 9th December 1978. At present, only twenty-five countries have ratified the Convention, whose majority consists of migrant-sending countries.[35] Also known as the Convention Concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, it pertains to two main issues: the prevention of clandestine migration and the fight against discrimination. Accordingly, the Convention is divided in two parts: the first one concerns migration in abusive conditions, while the second section focuses on the principle of equality of opportunity and treatment. At the moment of ratification Member States may exclude either Part I or Part II, but they are nevertheless committed to report on their policies adopted under the excluded part too.[36] The Convention is supplemented by the provisions of the Migrant Workers Recommendation, which was adopted during the same International Labour Conference session. The Recommendation was submitted to the competent authorities of more than 120 countries, among which there are Australia, China, France, Germany, Italy, the United States and the United Kingdom.[37] The Convention's Preamble is longer and more detailed than the preambles of the instruments analysed in the previous pages. It underlines the importance of preventing the increase of illegal migratory flows "because of their negative social and human consequences" and of guaranteeing to everyone the right to leave and enter any country, including the country of origin.[38] The Migration for Employment Convention (Revised) of 1949 and the Discrimination (Employment and Occupation) Convention of 1958 are recalled, and it is furthermore specified that the present Convention should integrate them as well. The first article is very concise, but it refers directly to the core principle of the Convention: "Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers."[39] Migrant workers are hence considered firstly as human beings, and secondly as workers, whose protection is established in the subsequent articles. According to Article 2, each Member State is committed to know whether there are illegally employed migrant workers within its

[35] United Nations Treaty Collection, "Convention (No. 143) Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers" (Geneva, 1975), treaties.un.org/doc/Publication/UNTS/Volume 1120/volume-1120-I-17426-English.pdf.
[36] *Ibid*., Art. 16.
[37] International Labour Organisation website, "Submission of R151 – Migrant Workers Recommendation, 1975", url: www.ilo.org/dyn/normlex/en/f?p=1000:13300:0::NO:13300:P13300_INSTRUMENT_ID:312489, last seen on 17th December 2020.
[38] United Nations Treaty United Nations Treaty Collection, "Convention (No. 143) Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.", Preamble.
[39] *Ibid.*, Art. 1.

territory and how they arrived, considering also if they were subjected to inhuman or degrading treatment prohibited by international multilateral instruments or by national law during the journey.[40] Article 3 addresses directly one of the two core purposes of the Convention, stating that each Member State shall collaborate with other Members in order to repress irregular migration and employment of migrants, condemning also the organisers and employers that contribute to such illegal actions.[41] The provisions established by Article 3 are reiterated in Articles 5 and 6, which condemn the traffic of manpower and dispose the prosecution of employers who illegally hire migrant workers.[42] It is underlined that if a migrant worker loses his job, and he has resided legally in the country of employment, he shall not be considered in an irregular situation. On the contrary, equality of treatment with nationals should be granted to him in respect of security of employment, the possibility to find an alternative employment and to retrain.[43] The definition of migrant worker is provided in Part II, Article 11: "For the purpose of this Part of this Convention, the term "migrant worker" means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker."[44] The second paragraph of the article sets the categories of workers which the Convention does not apply to: frontier workers, artists and members of liberal professions, seamen, students or trainees, and employees who entered the country on a temporary basis to undertake specific duties for a limited and defined period of time. Furthermore, Article 13 precises what are the members of the migrant worker's family considered by the Convention: the spouse, dependent children, the father and the mother. For the first time a multilateral agreement provides a clarification on who are the members of the family of the migrant worker considered in its provisions. Article 13 encourages as well the collaboration between Member States for facilitating the reunification of the migrant worker with the members of their family.[45] A list of principles that should be sought through national regulations by Each Member is provided at Article 12. This enables each State to build a system of regulations cohesive with the one of other States, ensuring coherence and stability to such legal standards. Among the listed provisions, the cooperation with employers' and workers' organisations, the social protection and assistance of migrant

[40] *Ibid.*, Art. 2.
[41] *Ibid.*, Art. 3.
[42] *Ibid.*, Artt. 5 and 6.
[43] *Ibid.*, Art. 8.
[44] *Ibid*., Art. 11.
[45] *Ibid*., Art. 13.

workers and their families, and the principle of equality of treatment with nationals are the main ones.[46]

The corresponding Migrant Workers Recommendation is divided into three parts: the first part introduces the provisions about equality of opportunity and treatment, the second part regards social policy measures, while the third part focuses on the employment and residence conditions. Paragraph 5 of the Recommendation establishes an important concept: each Member should ensure that its national laws concerning the residence in its territory are applicable without inhibiting the principles provided in the Recommendation.[47] Therefore, national laws and international provisions need to be consistent with each other in order to be efficiently applicable and respected. Paragraph 8(3) sets that even if a migrant resides or works under irregular conditions, he should enjoy equality of treatment for what concerns remuneration, social security and other benefits.[48] This is an important aspect, since the irregular status of the migrant worker does not prevent them from enjoying the rights recognised to regular migrant workers. Clandestine labour migration must be prevented, but not to the detriment of the protection of migrant workers' rights. The Recommendation recalls at Paragraph 30 the Migration for Employment Recommendation (Revised) of 1949, particularly its Paragraph 18 concerning the migrant worker's right to reside in the territory, even if they lost their employment. As a matter of fact, Paragraph 31 furthermore underlines that the migrant worker should be allowed sufficient time to find an alternative occupation and should be entitled to unemployment benefit.[49] Besides, according to Paragraph 34, the legal status of the migrant worker should not be considered for what concerns the entitlement of the work remuneration, the benefits for employment injuries, reimbursement of social security contributions and other compensations.[50] Once again, the legal status of migrant workers does not prevent them from enjoying the rights that the Migrant Workers Recommendation guarantees them. This is an important improvement in the context of the international protection of migrant workers, since the multilateral agreements adopted in the previous years did not guarantee any right or protection to migrant workers in an illegal status.

In conclusion, some key concepts can be summarised from the multilateral instruments analysed so far. The International Labour Organisations has developed a system of labour standards since the very beginning of its creation through the adoption of multilateral conventions and recommendations.

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[46] *Ibid*., Art. 12.
[47] International Labour Organisation, "Migrant Workers Recommendation" (Geneva, 1975), Paragraph 5.
[48] *Ibid*., Paragraph 8(3).
[49] *Ibid*., Paragraphs 30 and 31.
[50] *Ibid*., Paragraph 34.

Concerning the migrant workers category, such multilateral arrangements obtained the consensus of mainly migrant-sending countries and recommendations were more successful than conventions. Although all these instruments represent the first steps of the ILO action against the exploitation and discrimination of migrant workers, their level of accuracy results increasingly high and rigorous. As a matter of fact, the most recent instruments concern the protection of migrant workers' human rights and labour rights, as well as the protection of irregular migrant workers, who were not considered in the older arrangements. This indicates the increased degree of concern and awareness in the field of migrant workers' international protection.

The multilateral convention analysed in the next paragraph is the only one adopted within the United Nations framework. It is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

The evolution of ILO standards on migrant workers' protection and the awareness reached through the adoption of the ILO instruments analysed so far were crucial for the elaboration of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) in 1990.[51] After a long drafting process the General Assembly of the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families at its forty-fifth session on 18th December 1990. The Convention, however, entered into force only on 1st July 2003: despite the global campaign launched by the United Nations in 1998 to promote the ratification of the ICRMW, the welcome from States was unenthused.[52] Currently, the ICRMW has been ratified by 56 countries, which are all underdeveloped or developing emigration countries.[53] This feature is similar to ILO's instruments, whose majority of ratifying States are emigration countries that export migrant labour but do not play a considerable impact on the working and living conditions of migrant workers in countries of employment. However, it is important to note

[51] Hasenau, "ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis."
[52] Vittin-Balima, "Migrant Workers: The ILO Standards", p. 7.
[53] United Nations Treaty Collection, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," *Treaty Series. Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations* Vol. 2220 (1990): 93–127, treaties.un.org/doc/Publication/UNTS/Volume 2220/v2220.pdf.

that emigration countries exercise great influence for what concerns the protection and assistance of migrant workers before their departure and after their return.[54] The ICRMW underlines the link between migration and human rights, a correlation that has been gaining increasing importance worldwide and represents the culmination of more than thirty years of international debate on migrant workers and human rights studies.[55] The preamble of the Convention recalls the 1949 and 1975 ILO Conventions and evokes also the importance of preventing and eliminating irregular migration. The first significant aspect of the ICRMW is introduced in Article 2, which provides the definition of migrant worker and of all the categories of migrant workers. This is the first time that seasonal workers are directly mentioned and determined as category. Accordingly, "the term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (Art.2(1)), while "the term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year" (Art.2(2.b)).[56] Other categories of migrant workers are frontier workers, seafarers, itinerant workers and others, and ratifying States must include all of them in the application of the Convention, even though some are not considered in ILO instruments. The Convention is therefore indivisible in its content and application.[57] Article 4 provides an exhaustive clarification of who is considered as a member of the migrant worker's family, namely the spouse, dependent children and other dependent persons recognised as being members of the family.[58] On the other hand, Article 6 defines also the terms "State of origin", "State of employment" and "State of transit", which are all involved in the journey of the migrant worker from the State of origin to the State of employment, and are committed to respect and apply the Convention. Unlike previous ILO Conventions that recognised and protected the rights of legal migrant workers, the ICRMW extends such provisions also to migrant workers who reside or work illegally in the host country.[59] As a matter of fact, Article 5 establishes who is considered as being a regular migrant worker and who is not. Therefore, another peculiarity of the ICRMW is that although its

[54] Vittin-Balima, "Migrant Workers: The ILO Standards", pp. 10-11.
[55] High Commissioner for Human Rights, "The International Convention on Migrant Workers and Its Committee," 2005,
www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf., p. 1.
[56] United Nations Treaty United Nations Treaty Collection, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.", Art. 2.
[57] Vittin-Balima, "Migrant Workers: The ILO Standards", p. 10.
[58] United Nations Treaty United Nations Treaty Collection, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.", Art. 4.
[59] *Ibid*., Art.6.

long-term scope is to discourage and finally eradicate irregular migration, it nevertheless guarantees the fundamental rights of migrant workers involved in illegal migratory flows.[60] Articles from 7 to 35, corresponding to Parts II and III of the Convention, define the non-discrimination principle and the protection of the human rights of all migrant workers and members of their families, still specifying that the legal status of the migrant worker should not prevent them from enjoying such rights. Part IV introduces the rights recognised to documented migrant workers only, providing more technical and detailed clauses about the conditions of employment, residence and other aspects. Part V specifies the provisions applicable to each category of migrant workers. In particular, Article 59 makes direct reference to seasonal workers, asserting that the State of employment may grant to seasonal workers employed in its territory the opportunity to be employed in another remunerated occupation and may give them priority over other workers seeking admission to the State.[61] Part VI of the Convention solicits States to promote a system of sound, equitable and lawful conditions in respect to international labour migration, promoting cooperation and coordination between States. Part VII concerns the application of the Convention through the creation of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. According to Article 72(1.b), the Committee consists of fourteen members nominated by State Parties by secret ballot. Members from both origin and employment countries shall be elected and their term shall last for four years.[62] As Article 73 disposes, State Parties shall report to the Committee their steps in the implementation of the ICRMW, making reference also to the problems they encountered and to the migration flows that involved their territory.[63] The Committee shall examine the reports and transmit the appropriate comments to the State concerned or request further information and data. Moreover, the Committee is expected to closely collaborate with international agencies, precisely with the International Labour Office.[64] In Part VIII, concerning the general provisions of the Convention, Article 79 affirms the sovereignty of each State to settle the criteria for the admission of migrant workers and members of their family, while for other matters concerning the legal status and treatment of migrant workers States should comply with the ICRMW provisions.[65]

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[60] Vittin-Balima, "Migrant Workers: The ILO Standards", p. 10.
[61] United Nations Treaty United Nations Treaty Collection, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.", Art. 59.
[62] *Ibid*., Art.72.
[63] *Ibid*., Art.73.
[64] *Ibid*., Art.74.
[65] *Ibid*., Art.79.

In conclusion, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families appears to be as a complex and broad instrument as the phenomenon it aims to regulate. On the one hand, it defines the civil, political, economic and cultural rights that should be guaranteed to migrant workers and members of their families, while on the other it establishes a wide system of commitments for State Parties that may result as substantial duties for them.[66] Therefore, it would be interesting to understand the reason why the number of its ratifications results so low, when compared with other core international human rights treaties.[67] First of all, the lack of awareness both of the existence and the content of the ICRMW is considered as one of the main interferences to the ratification. The second reason is connected to the first one: the misconception and misrepresentation of the Convention provisions have represented another obstacle to its ratification. A third cause is found in the frequent assumption that, while the ICRMW aims to prevent irregular migration, it actually encourages it by granting rights to undocumented migrant workers.[68] Although this belief raised some perplexities about the content and consistence of the Convention, it is explicitly stated in the Convention's Preamble that it seeks to discourage clandestine migration precisely through a broader recognition of the fundamental human rights to illegal migrant workers too.[69]

The following paragraph deals with a particular international instrument adopted within the framework of the International Labour Organisation. It is the ILO Multilateral Framework on Labour Migration, a set of non-binding principles and guidelines concerning labour migration. Due to the non-binding nature of its clauses, this instrument belongs to the soft law, the set of informal international treaties that was introduced and briefly described at the beginning of the current chapter. Accordingly, States do not need to ratify the Multilateral Framework and the non-compliance with its provisions does not imply the imposition of sanctions.

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[66] Euan MacDonald and Ryszard Cholewinski, "The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: EU/EEA Perspectives," *UNESCO Migration Studies* 1 (2007), p. 27.

[67] *Ibid*., p. 28.

[68] MacDonald and Cholewinski, "The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: EU/EEA Perspectives", pp. 39-41.

[69] United Nations Treaty United Nations Treaty Collection, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.", Preamble.

ILO Multilateral Framework on Labour Migration, 2006

During its 92nd session on 16th June 2004 the International Labour Conference agreed on undertaking a Plan of Action on Labour Migration, whose focal point was the adoption of a Multilateral Framework on Labour Migration. Consequently, a tripartite meeting of experts was held from 31st October to 2nd November 2005 for the discussion and adoption of the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration. In March 2006 the Framework was finally published and disseminated, serving as a useful tool to governments, employers' and workers' organisations.[70] The Framework is divided into different chapters and has two annexes: the first one pertains the ILO Conventions and Recommendations to which its principles refer, while the second annex provides several examples of best practices carried out by States. An interesting aspect is that the non-binding guidelines of the Multilateral Framework have been partly inspired from such practices, whose sources are regional compilations, research and publications of international organisations and of the International Labour Office.[71] Some examples of best practices will be provided at the end of the paragraph.

The Framework chapters are divided according to the several aspects of migrant workers' international protection and regulation, from the provisions regarding decent work to the ones concerning the prevention of abusive migration and the social integration of migrant workers. As it is stated in the introduction of the Framework, migration for employment is nowadays a global issue affecting most of the countries in the world, and for this reason the Framework aims to support States in developing more effective labour migration policies, while acknowledging the sovereignty right to promote their own policies on such matters.[72] The non-binding provisions of the Framework do not affect the commitments deriving from the ratification of any ILO Convention, they rather "provide practical guidance to governments and to employers' and workers' organizations with regard to the development, strengthening and implementation of national and international labour migration policies."[73] Therefore, the ILO Multilateral Framework's aim is to foster cooperation and coordination between the ILO constituents and to assist them through the elaboration of a cohesive set of principles. An intriguing question that may raise regards the reason why the ILO decided to adopt an instrument with non-binding clauses instead of a binding convention. The

[70] International Labour Organisation, "ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration" (Geneva, 2006), pp. v-vi.
[71] *Ibid*., p. 35.
[72] *Ibid*., p. 3.
[73] *Ibid*., p. 4.

answer can be given considering the fact that States may be more prone to accept the Multilateral Framework norms instead of feeling bound to a binding multilateral convention through its ratification. Similarly, States that would not ratify a convention can nevertheless respect the ILO standards set out in the Multilateral Framework, considering them during the drawing of their own national policies. The non-binding nature of the Multilateral Framework itself makes it a more cohesive and inclusive instrument, since labour migration issues involve a great number of matters that entail State's action under different perspectives, from the economic to the social one. Moreover, binding multilateral conventions adopted to protect and regulate migrant workers already exist and are still in force, even if they met the consensus of quite exclusively labour exporting countries. It may be possible that labour importing countries, which are usually industrial powers, are more inclined to respect and accept non-binding clauses that do not counteract their economic and political interests.

The Multilateral Framework often recalls the 1949 and 1975 ILO Conventions, maintaining that their principles constitute the international legal foundation which is fundamental to governments and guides their actions. The 1990 UN International Convention on the Protection of the Rights of All Migrant Workers is recalled as well, underlining that if all these conventions have been ratified, Member States should fully implement them.[74] As the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Multilateral Framework recognises and promotes the protection of the rights of all migrant workers regardless of their status,[75] while it commits Governments to implement measures against migrant smuggling and trafficking in person, preventing also irregular labour migration.[76] International cooperation between Governments, workers' and employers' organisations is supported and encouraged. An implicit reference to seasonal workers is made at Principle no. 9, whose guideline no. 12 states that specific measures should be adopted to address specific risks in certain occupations and sectors, such as hotels and restaurants.[77] Although the content of Principle no. 9 is very general, its guidelines include a wide range of fundamental aspects related to the protection of migrant workers and the promotion of equal opportunities in workplaces. It appears clear how the Framework strives to include every feature of migrant workers' protection and assistance during their journey and in the country of employment, aiming at providing a set of principles as

[74] International Labour Organisation, "ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration", Principle no. 9, p. 16.
[75] *Ibid*., Principle no. 8, p. 15.
[76] *Ibid*., Principle no. 11, p. 21.
[77] *Ibid*., Principle no. 9, guideline no. 12, p. 18.

complete and coherent as possible. As a matter of fact, each chapter of the Framework deals in detail with the principles already introduced in the preceding international instruments, consolidating the standards that have developed since the very beginning of the ILO and UN action.

Some examples of States best practices are provided in the second Appendix of the Framework and indicate the policies adopted by Governments from which the clauses of the Framework were drawn. Several examples refer to the protection and regulation of seasonal workers. For instance, in Canada the Seasonal Agricultural Worker Programme has been introduced since 1966 in order to cope with labour shortages in the agricultural sector. It disposes the free movement of migrant workers during the planting and harvesting seasons through the adoption of Memoranda of Understanding between Canada and the main migrant workers' countries of origin: Mexico, Jamaica and other Caribbean countries. The Human Resources Development Canada (HRDC) is the competent authority that administers the Programme and where employers apply for the research of workers, ensuring a minimum number of working hours, for at least six weeks, free housing and a minimum wage. Workers can be requested by name and many of them are employed in the same farm year after year.[78] Before their arrival, the employment contract is signed between the employer, the worker and a government agent, and it guarantees pension plan contributions, vacation pay, health-care coverage and compensation insurance. Workers are met at the airport and assisted with the entry procedure, even though temporary agricultural workers, among which seasonal workers are included, do not enjoy some labour protections such as freedom to change jobs and overtime pay.[79] Another example of seasonal programme that operates under the adoption of Memoranda of Understanding with origin countries is the Seasonal Foreign Workers' Programme in Germany. Agricultural migrant workers come mainly from Poland and are employed for a maximum of 90 days whether nationals are not available to work in agriculture, hotels and catering, sawmills and other sectors where migrant workers are usually employed. Employers are required to hire seasonal workers for less than seven months each year. Employment contracts shall indicate wages and working conditions, housing, meals and travel arrangements if any, and shall be submitted to local labour offices. Even if adequate housing shall be granted by contract, some reports have displayed low-quality living conditions.[80] In Spain the "Circular migration" project arranges the recruitment of seasonal workers from Morocco, Colombia and other countries in Eastern Europe, in order to employ them in Catalonia. The

[78] International Labour Organisation, "ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration", example of best practice no. 41, p. 53.
[79] *Ibid*.
[80] *Ibid*., example of best practice no. 43, p. 54.

competent agencies of the Spanish and Catalan governments arrange the travel and hiring of workers, who shall work from five to seven months per year. The project manages also an accommodation plan, which currently counts 50 collective accommodations and aims at facilitating the seasonal workers' independence by integrating them in the local community and organising training activities.[81] One further example of efficient seasonal workers programme exists in France. The French trade union confederations, together with employers and local government representatives conduct a Seasonal Work Centre for Migrant Workers, which comprises 19 different agricultural communes. While informing workers on their rights, training opportunities, housing and French labour law, the Centre deals with the legalization of their status, too. It provides assistance both to employers and workers before, during and after the employment, whether the worker needs to change occupation.[82] When workers are employed in the tourist or agricultural sectors, the Centre organises the job rotation of workers in the different occupations, making possible the duration of lasting seasonal employment and even permanent employment contracts. Union and employers' representatives dispense a booklet to seasonal workers on recruitment procedures, employment contracts, working hours and social security benefits.[83]

In conclusion, the ILO Multilateral Framework on Labour Migration provides concrete assistance and support to all the parties involved in labour migration issues, from governments to employers' and workers' organisations. Its principles and guidelines are the natural extension of the set of labour standards and policies introduced in the previous UN and ILO international instruments.

As it has been demonstrated in this paragraph, the earlier multilateral instruments arrange the protection of migrant workers considering them exclusively as workers, establishing *de facto* norms and principles concerning solely their employment. Their provisions are generic and simple in content, making such conventions brief and concise. However, in subsequent years, the awareness regarding the issue on migrant workers' protection has raised and was impelled by the vulnerability and exploitation that migrant workers witness during the journey from the country of origin to the country of employment and in the workplace as well. Such increasing attention to migrant workers protection urged the international community to implement more inclusive and complex instruments that should consider migrant workers both as human beings and workers. As a consequence, the most recent

[81] *Ibid*., example of best practice no. 45, p. 55.
[82] International Labour Organisation, "ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration", example of best practice no. 91, p. 70.
[83] *Ibid*.

multilateral conventions result broader and more accurate, providing clauses that deal with all the aspects of migrant workers' recruitment, employment and social assistance. Besides, the later treaties make a distinction between all categories of migrant workers. As a matter of fact, seasonal workers are mentioned only in the more recent instruments, while previously the clauses referred to migrant workers in general. Even though such big steps have been made for the protection of all categories of migrant workers and members of their families, States have not demonstrated great participation and involvement in the issue, making the success of multilateral conventions moderate and subordinate to States' economic and political interests.

In the next paragraph the analysis focuses on the protection of seasonal workers at a regional level, considering the relations that Italy and Australia have established with the countries of their same geographical regions.

1.2 Regional multilateral treaties

The current paragraph examines the policies adopted within the framework of the European Union and the Pacific region. As a matter of fact, the third chapter will study the Italian and Australian cases, examining the seasonal workers phenomenon from an economic and legal perspective at domestic level. For this reason, this chapter will only focus on the norms and how they have been applied at regional level, postponing the analysis of their practical effects on the Italian and Australian economies in the third chapter.

Directive of the European Parliament and of the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, 2014

The Directive was adopted on 26th February 2014, but entered into force a month later, the day after its publication on the Official Journal of the European Union, as Article 29 disposes.[84] It is divided into five chapters: (i) General provisions, (ii) Conditions of admission, (iii) Procedure and authorisations for the purpose of seasonal work, (iv) Rights and (v) Final provisions. Each chapter contains several articles, providing a complete and detailed set of norms for the recruitment and employment of third-country nationals as seasonal workers. Of course, as Article 30 states, the Directive is

[84] "Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the Conditions of Entry and Stay of Third-Country Nationals for the Purpose of Employment as Seasonal Workers," *Official Journal of the European Union* 57 (2014): 375–90, https://doi.org/10.3000/19770677.L_2014.094.eng, Art. 29.

addressed to all European Member States and was adopted within the framework of the European Parliament and of the Council. The Preamble is very long and composed of fifty-five paragraphs, which provide information about the measures and policies previously adopted on the conditions of entry and stay of third-country nationals. For example, the Hague Programme (2004) and the Stockholm Programme (2009) are cited, as well as the Schengen *acquis*. Not only does the Preamble provide the proper guidelines for the application of the Directive without affecting the application of other regulations, but it also makes the distinction between the length of seasonal workers' stay and how the Schengen *acquis* should be applied properly.[85]

It is worth examining the ground of application of the Schengen *acquis*[86] and of the Directive, clarifying when one should be applied instead of or together with the other. Accordingly, as introduced by Paragraph 19 *et seq* in the Preamble, a distinction is made between stays not exceeding 90 days and stays lasting more. On the one hand, for seasonal workers admitted for stays shorter than 90 days in Member States applying the Schengen *acquis* in full, the Directive should only regulate the requirements for access to employment. On the other hand, for stays exceeding 90 days, the Directive shall define both the criteria for admission and stay and the conditions of employment in the Member State.[87] The second paragraph of Article 1 reiterates that for stays not exceeding 90 days, the Directive shall be applied without prejudice to the Schengen *acquis*.[88] Even for what regards fees and costs, Article 19(1) clearly states that the Schengen *acquis* provisions shall be consulted also in the case of fees for short-stay visas.[89]

Paragraph 31 of the Preamble asserts that Member States should fix the maximum duration of stay, which should be limited to a period of between five and nine months per year. The extension of the contract is possible and when the contract expires, the seasonal worker can be hired by a different

[85] *Ibid*., pp. 376-377.
[86] The Schengen *acquis* allows EU citizens to travel across Member States borders without being checked or having to show their passports. It also safeguards the security of EU citizens through the application of uniform criteria on controls at the common external border. It was firstly introduced by few governments in 1985 as an initial plan of cooperation. In 1997, through the adoption of the Treaty of Amsterdam, the Schengen acquis eventually became a fully established EU policy. If further information is needed, it is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al33020, last seen on 16th February 2021.
[87] "Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the Conditions of Entry and Stay of Third-Country Nationals for the Purpose of Employment as Seasonal Workers", Paragraphs from 19 to 21, pp. 376-377.
[88] *Ibid*., p. 380.
[89] *Ibid*., p. 387.

employer.[90] Paragraph 51 recalls the principles of subsidiarity and proportionality for what concerns the achievement of the Directive's objectives.[91]

The subject-matter of the Directive is presented in Article 1(1), which underlines that the Directive determines the conditions of entry and stay of third-country nationals for the purpose of seasonal employment. The Directive nevertheless aims at defining and protecting seasonal workers' rights. Article 2 defines the scope, asserting that it shall apply to third-country nationals who reside outside the territory of EU Member States and apply to be employed as seasonal workers in the territory of a Member State.[92] The definition of seasonal worker is then provided at Article 3:

> "For the purpose of this Directive the following definitions apply: […] (b) 'seasonal worker' means a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State."[93]

Therefore, the seasonal worker shall not be a citizen of the European Union and should be employed in an activity that is tied to a certain period of the year. Besides, the seasonal worker must reside in the Member State legally and temporarily: this suggests that the Directive provisions consider exclusively legal seasonal workers and do not provide protection for irregular ones. Article 3 further specifies what a seasonal worker permit is, i.e., an authorisation for seasonal employment in a Member State for a duration exceeding 90 days. On the other hand, if a Member State does not apply the Schengen *acquis* in full, it shall issue a short-stay visa.[94] Article 4 regards the application of most favourable provisions, asserting that "this Directive shall apply without prejudice to more favourable provisions of: (a) Union law […];

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[90] *Ibid*., p. 378.
[91] *Ibid*., p. 380. The principles of subsidiarity and proportionality are set out in Article 5 of the Treaty on the European Union (2007). Basically, the principle of subsidiarity states that the EU shall not take action, unless it is more effective than action taken at national, regional or local level. The principle of proportionality affirms that EU action must be limited to what is necessary to achieve the aim pursued. More information is available in the Glossary section of the EUR-lex website: https://eur-lex.europa.eu/, last seen on 16th February 2021.
[92] *Ibid*., Artt.1 and 2, p. 380
[93] *Ibid*., Art.3, p. 381.
[94] *Ibid*.

(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries".[95]

The second chapter of the Directive examines the conditions of admission for employment. More precisely, Article 5 concerns stays not exceeding 90 days, while Article 6 regards stays exceeding 90 days. In both cases a valid work contract is needed, as well as a sickness insurance and adequate accommodation. Besides, in the third paragraph of both Articles, Member States are required to provide the seasonal worker with sufficient resources during the stay so that he does not need to recourse to their social assistance system. Moreover, seasonal workers employed for a period longer than 90 days are required to possess a valid travel document, which shall cover at least the period of validity of the seasonal work authorisation.[96] Member States have the right to reject an application for seasonal work whether Articles 5 and 6 are not complied with or the documents presented result falsified, as Article 8 states, or if the employer has been sanctioned, for example, for illegal hiring. Member States shall give priority to nationals, to other EU citizens, or to third-country nationals lawfully residing in their territory in filling the job vacancy.[97] As Paragraph 31 of the Preamble has already anticipated, Article 14 arranges the duration of stay, which shall be determined by Member States and shall last between a minimum of five and a maximum of nine months per year. Of course, the stay can be extended or renewed, within the maximum period established in Article 14, in the case seasonal workers extend their contract with the same employer. Seasonal workers shall be allowed also to be employed with a different employer, provided that the period of employment does not exceed the nine-months limit.[98] The right to equal treatment with nationals is established in Article 23, precisely with regard to terms of employment, the right to strike, branches of social security, education and vocational training, recognition of diplomas and certificates and tax benefits. Member States can restrict equal treatment for specific reasons disposed in the second paragraph of the article.[99] Finally, Article 25 regulates the lodgement of complaints by seasonal workers against their employers. Namely, seasonal workers can lodge a complaint directly or through third parties, which shall act in accordance with the Directive. Such third parties can engage either on behalf or in support of the seasonal worker, who shall be protected by the Member State with measures protecting against dismissal or other types of adverse treatment pursued by the employer as a reaction to the

[95] *Ibid*., Art.4, p. 381.
[96] "Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the Conditions of Entry and Stay of Third-Country Nationals for the Purpose of Employment as Seasonal Workers", Art.6(7), p. 383.
[97] *Ibid*., Art. 8, p. 383.
[98] *Ibid*., Artt. 14 and 15, p. 386.
[99] *Ibid*., Art. 23, p. 389.

complaint.[100] To conclude, Member States are required to make the Commission aware of the main policies they adopt in the field regulated by the Directive, as Article 28 disposes, so as to guarantee consistency and stability between the national and the regional provisions.

The Directive on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers represents certainly a substantial and thorough set of norms, which aims at protecting and regulating the recruitment and employment of seasonal workers coming from non-European countries. Its provisions are detailed and recall the previous agreements adopted in the same field, ensuring a cohesive and stable legal body of guidelines for Member States. As far as irregular seasonal workers are concerned, the present Directive do not consider them in its provisions, but it is desirable that future developments will move in this direction, with the purpose of guaranteeing legal protection also to those workers whose voices are silenced.

The next paragraph regards the cooperation between countries in the Pacific region in the field of seasonal workers protection and regulation. At this point, a fundamental premise needs to be made: the regional cooperation that has been developed within the European Union and the consequent unified European legal system are a unique example without equal cases worldwide. For this reason, the coordination developed in the Pacific region has not been defined by a supranational legal institution, it nevertheless began with the decision of the Australian government to implement several programs for seasonal workers safeguard and employment in cooperation with Pacific island countries.

Pacific Seasonal Worker Pilot Scheme, 2008

The Pacific Seasonal Worker Pilot Scheme (PSWPS) was launched by the Australian government in August 2008 to face the labour shortages in Australia's horticultural industry through the seasonal employment of workers from Kiribati, Papua New Guinea, Tonga and Vanuatu.[101] Seasonal migration programmes are increasingly used worldwide, since they benefit the migrants themselves, the receiving country and the sending country, giving job opportunities and assisting the sectors where seasonal workers are employed. As a matter of fact, the PSWPS was introduced precisely to consider whether the seasonal employment of workers from Pacific islands would have helped on the one hand the economic development of Pacific countries, and on the

[100] *Ibid*., Art.25, p. 389.
[101] John Gibson and David McKenzie, "Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS): Development Impacts in the First Two Years," 2011.

other Australian growers dealing with labour shortages.[102] The scheme established a total quota of 2,500 short-term working visas, divided into two phases: the first one, going from November 2008 to June 2009, allocated 100 visas; the second phase between July 2009 and June 2012 allocated the remaining visas.[103] Initially, PSWPS was designed to last three years, but in December 2011 the Government announced that the scheme would become permanent.[104] Seasonal workers were committed to several activities; the main were harvesting citrus fruits and almonds, and pruning grape vines. In a press release of 17th August 2008, the Minister for Agriculture, Fisheries and Forestry Tony Burke declared that before employing overseas low-skilled seasonal workers, Australian employers are required to demonstrate that such job vacancies cannot be filled by nationals.[105] Moreover, employers shall engage in programmes for the training of Australian workers who may not yet be considered job-ready, while all low-skilled seasonal workers shall be protected from job exploitation as national workers are. Hon. Burke also added that "Pacific island workers are not a cheap labour option", and for this reason participating employers may compensate half of the return air fares and pay for establishment and pastoral care costs for Pacific workers brought to Australia. Under the PSWPS, seasonal workers were granted an average of 30 hours' work per week for six months, transparency of wage deductions, the possibility to call the employer whenever it was needed and assistance in understanding and complying with visa conditions.[106] Workers were provided also with government-funded skills training in financial literacy, basic literacy and numeracy.[107] Initially, as already mentioned, the PSWPS served to test whether a seasonal programme would solve the shortages in the Australian horticultural industry workforce and, at the same time, boost the development of Pacific island communities through the implementation of job opportunities and new sources of earnings for workers.[108] However, at the beginning of the

[102] *Ibid*.
[103] *Ibid*.
[104] Danielle Hay and Stephen Howes, "Australia's Pacific Seasonal Worker Pilot Scheme: Why Has Take-up Been so Low?," 2012, papers.ssrn.com/sol3/papers.cfm?abstract_id=2041833.
[105] Press release of 17th August 2008, "Horticulture industry Pacific seasonal worker pilot scheme", citation ID: 6YAR6. The text of the press release is available at: parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F6YAR6%22;src1=sm1, last seen on 23rd February 2021.
[106] Rochelle Ball, "Australia's Pacific Seasonal Worker Pilot Scheme and Its Interface with the Australian Horticultural Labour Market: Is It Time to Refine the Policy?," *Pacific Economic Bulletin* 25, no. 1 (2010): 114–30, openresearch-repository.anu.edu.au/handle/1885/31616, p. 121.
[107] *Ibid*., p. 122.
[108] Press release of 17th August 2008, "Horticulture industry Pacific seasonal worker pilot scheme", citation ID: 6YAR6.

scheme, few workers took part: only 56 visas were issued in the first phase, while in the second one only 214 visas were taken up. The reasons are manifold: the global economic situation after the 2008 crisis was unfavourable, recruitment regulations for employers were not flexible and, moreover, illegal seasonal workers in Australia revealed to be massive competitors.[109] Since undocumented workers reside in precise towns, such as Griffith, Robinvale and Bundaberg, the PSWPS aimed to supply registered seasonal workers in these regions.[110] Despite its initial unsuccess due to the low participation of Pacific workers, the PSWPS is considered as a sizable step in the level of engagement of Australia with its Pacific neighbours.[111] While strictly admitting only seasonal and circular employment, the scheme gave workers the opportunity to stay in touch with their families and communities. As a matter of fact, the pilot scheme implemented strong incentives for remitted income and allowed workers multiple entries during the same year and in future years, provided that they still met the admission requirements.[112] The PSWPS was indeed very selective for what concerned visa eligibility and the possession of private health insurance during the workers' stay. Workers had to be healthy and in working age, and could be employed only by admitted employers. An interesting aspect is that family members or dependents could not come to Australia with workers, who were denied the possibility of residency or permanent migration as well.[113] Another peculiar element of the PSWPS is that Pacific workers worked for the so-called Eligible Growers, but could be employed only by Approved Employers, who may themselves be growers or labour-hire companies. Both Approved Employers and Eligible Growers must comply with precise requirements regarding the submission of recruitment plans, accommodation and conditions of the contract.[114] In September 2011, also Nauru, Samoa, the Solomon Islands and Tuvalu were confirmed as sending countries, as well as Timor Leste in 2012. However, the PSWPS counted some key issues that affected its immediate success, starting from the sectors it covers, whose employment conditions are unfavourable and do not attract Australian workers.[115] The labour-hire company model was very rigid and did not respond well to fluctuations in the Australian labour demand. Besides, a serious obstacle was

[109] Gibson and McKenzie, "Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS): Development Impacts in the First Two Years."
[110] Ball, "Australia's Pacific Seasonal Worker Pilot Scheme and Its Interface with the Australian Horticultural Labour Market: Is It Time to Refine the Policy?", p. 119.
[111] *Ibid*.
[112] *Ibid*., p. 122.
[113] *Ibid*.
[114] Hay and Howes, "Australia's Pacific Seasonal Worker Pilot Scheme: Why Has Take-up Been so Low?", p. 8.
[115] Ball, "Australia's Pacific Seasonal Worker Pilot Scheme and Its Interface with the Australian Horticultural Labour Market: Is It Time to Refine the Policy?", p. 122.

represented by the great number of irregular workers that had repercussions on the demand for workers under the PSWPS. For this reason, the PSWPS was tightly controlled so as to prevent the employment of undocumented workers and regularise labour supply in the horticultural sector.[116] Last but not least, the lack of clarity over wages and employment conditions and the concerns about the Australian government's inability to establish and arrange such an international seasonal labour supply scheme raised several doubts in employers.[117] Consequently, starting from 2009, several adjustments were made to the PSWPS parameters in order to increase industry demand and meet the needs of the horticultural industry for seasonal employment.[118] Making the pilot permanent in 2011 was a crucial step for achieving larger stakeholders' reliance on the programme. Notwithstanding the initial difficulties, the PSWPS evaluation considered the pilot as the proper solution for meeting the seasonal labour demand of the horticultural sector, managing the risks of exploitation and registering positive development impacts.[119] Eventually, in 2012 the PSWPS was incorporated in the Seasonal Worker Programme (SWP), which is introduced in the next paragraph.

Seasonal Worker Programme, 2012

The Australian government began the Seasonal Worker Programme (SWP) on 1st July 2012. The programme has two particular scopes: on one hand, the SWP contributes to the economic development of the partner countries supplying job opportunities and remittances, while on the other it also benefits to Australian employers and to the Australian economy, meeting the labour demand in specific sectors.[120] Partner countries are Pacific island countries, namely: Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu, which all entered the programme through the conclusion of Memoranda of Understanding with Australia. Seasonal workers are recruited from participating countries and then employed by Australian Approved Employers (AEs). The recruitment

[116] *Ibid*., pp. 123-124.
[117] *Ibid*., p. 124.
[118] World Bank, "Maximizing the Development Impacts from Temporary Migration: Recommendations for Australia's Seasonal Worker Programme," 2017, http://documents1.worldbank.org/curated/en/572391522153097172/pdf/122270-repl-PUBLIC.pdf, p. 16.
[119] Hay and Howes, "Australia's Pacific Seasonal Worker Pilot Scheme: Why Has Take-up Been so Low?", pp. 9-10.
[120] Australian Government, Department of Education, Skills and Employment, "SWP Implementation Arrangements," 2015, www.dese.gov.au/seasonal-worker-programme/resources/swp-implementation-arrangements-effective-all-new-recruitments-5-november-2018.

procedure can occur in three different ways, which are decided at the discretion of each partner country. The first one establishes a work-ready pool of suitable candidates which is defined by the nominated Ministry of the participating country and from which AEs recruit seasonal workers. In order to be included in the work-ready pool, candidates must meet the Eligibility Requirements established in the agreement for the implementation of the SWP. If employers wish to interview the candidates, the nominated Ministry of the concerned country shall arrange the interviews and, if required, make a pre-selection of candidates. The second recruitment pathway implies the direct employment of candidates by the AE in collaboration with the competent Ministry of the country, so as to assess whether the candidates meet the eligibility requirements. The third and last recruitment procedure entails the recruitment via an agent licensed by the competent Ministry. Approved Employers wishing to recruit via agent should contact the Australian government, which will provide them the information needed to contact the recruitment agent of the Participating Country. Licensees work on behalf of the AE to identify and arrange the transport to Australia of selected Seasonal Workers.[121] Even if the recruitment procedures can be different from one country to another, the integrity of recruitment must be ensured in any case. For this reason, under the SWP seasonal workers can only be recruited via the nominated Ministry or the licensed recruitment agent of the participating country, or through direct recruitment, if the country so disposes. Seasonal workers can only be employed by Approved Employers, who decide which participating country to recruit from. Furthermore, gender equity and fair manners must be pursued during the recruitment of workers, as well as the avoidance of conflict of interest between participating countries in the selection of seasonal workers.[122] Concerning the eligibility requirements for seasonal workers, they are reviewed by the competent Ministry and recruitment agents. First of all, candidates must be of good character, which means that "they do not have a substantial criminal record".[123] Secondly, they must undergo a medical examination in order to demonstrate they are healthy and fit for the work. Eligible workers must have turned 21 at the time of the visa application and must be citizens of a participating country and not of Australia. Last but not least, prospective seasonal workers must "have a genuine intention to enter Australia temporarily for seasonal work, and return to the participating country after their employment ceases."[124] Visa eligibility requirements are very similar to the requirements for eligible candidates, and are set out in the Australian Migration Act of 1958, the Migration Regulations

[121] Australian Government, Department of Education, Skills and Employment, "SWP Implementation Arrangements", paragraph "Recruitment".
[122] *Ibid*.
[123] *Ibid*., paragraph "Program eligibility requirements".
[124] *Ibid*.

of 1994 and the supporting policies.[125] The visa application is made online and refers only to the worker, so it does not include any dependent or accompanying family member. The Australian government is the only one institution that can decide for the visa grant or refusal and, if granted, visas are valid for multiple entry for a maximum work period of nine months per year.[126] Seasonal workers must be sponsored by an Australian organisation that has been approved as Temporary Activities Sponsor. Accordingly, seasonal workers shall work only for the Australian sponsor and maintain appropriate private health insurance during their stay in Australia.[127] The Temporary Activity Sponsor is, in short, the Approved Employer.

For what concerns employers under the Seasonal Worker Programme, they must meet some criteria in order to become Approved Employers (AEs). There are three categories of employers in the horticultural sector under the SWP: growers, labour hire companies and contractor companies.[128] Growers can either become an approved employer or enter into agreements with labour hire or contractor companies so as to employ seasonal workers. If growers become AEs, they can directly employ seasonal workers and are directly responsible for their pay and working and living conditions. Labour hire companies provide growers with horticulture labour through the conclusion of agreements that specify the number of workers to be provided, the type of work undertaken and wages. The labour hire company is responsible for ensuring seasonal workers appropriate working and living conditions. Contractors are horticulture service providers as well: they enter into agreements with growers to define which work is requested and the kind of remuneration, for instance piece rate or paddock rate. They are responsible for seasonal workers' pay and conditions.[129] In order to become Approved Employers, growers, labour hire companies and contractors are required to complete an online application form and provide all the information requested. Employers working under the SWP shall meet specific requirements beyond the ones asked to all Australian employers. For instance, AEs are committed to verify the Australian labour market by seeking the employment of local labour force first. If local labour force is not available, AEs can recruit and employ Pacific seasonal workers. SWP employers shall ensure appropriate

[125] Australian Government, Department of Education, Skills and Employment, "SWP Implementation Arrangements", paragraph "Visa eligibility requirements".
[126] *Ibid*., paragraph "Visa application requirements and processing arrangements".
[127] *Ibid*.
[128] Shiji Zhao et al., "What Difference Does Labour Choice Make to Farm Productivity and Profitability in the Australian Horticulture Industry? A Comparison between Seasonal Workers and Working Holiday Makers," 2018, www.agriculture.gov.au/abares/research-topics/productivity/productivity-drivers/seasonal-workers-report#download--the-full-report, p. 4.
[129] *Ibid*., p. 5.

accommodation and organise transport and flights for workers, as well as certify they have health insurance and can access health care as needed.[130]

As far as employment arrangements are concerned, they consist of a written offer made by the Australian Approved Employer to a seasonal worker. The arrangement shall include: the pay and conditions of employment as well as the duration and the location, a description of the activity that the seasonal worker will undertake, information about accommodation and transport, and any further relevant information.[131] Candidates must sign the offer before submitting the visa application to work in Australia. One important aspect is that AEs are required to demonstrate to the Australian government that seasonal workers will benefit financially from the participation to the program: as already mentioned, one of the SWP objectives is indeed the contribution to economic development in partner countries through the provision of job opportunities and remittances.

Before applying for the SWP, prospective candidates and their communities shall be given pre-application briefings by the nominated Ministry of the country. Such briefings serve to describe living and working conditions in Australia and how the programme works with material provided also by the Australian government.[132] When the application to the Seasonal Worker Programme is made and seasonal workers are finally employed, they are given a pre-departure briefing too, which informs them about wages, the role of unions in Australia, taxation and deductions, safety norms in workplaces, discrimination and harassment, health insurance, and all other useful information concerning all the aspects of living in Australia. Once seasonal workers arrive in Australia, they receive an on-arrival briefing and orientation material with contacts for assistance, information about what to do in emergency situations, accommodation and transportation arrangements, the location of shops, medical facilities and other useful services, and so on. At the end of the working period, a pre-return briefing is delivered by Approved Employers to workers concerning transportation to the airport, the finalisation of bills and accounts and other conclusive procedures. Eventually, when seasonal workers return to their home country, the competent Ministry provide them with an on-return briefing, which regards earnings and seasonal workers' goals and keeping in touch in the case the AE wants to employ the seasonal worker the next year. The Ministry shall also collect seasonal workers' feedbacks on their placement and suggestions for improvements to the programme and the relative briefings.[133] Therefore, to conclude, Pacific

[130] *Ibid*.
[131] Australian Government, Department of Education, Skills and Employment, "SWP Implementation Arrangements", paragraph "Employment arrangements".
[132] *Ibid*., paragraph "Briefings".
[133] *Ibid*.

workers who wish to participate to the SWP are informed from the very beginning about the programme procedures and the kind of work they will undertake. AEs and the competent Ministry of each participating country are committed to assist and inform seasonal workers at every step of their recruitment and employment procedures, from the very beginning of the application to the programme to the reports collected at the end of the working period.

Both the Australian government and participating countries commit to evaluate the benefits of the Seasonal Worker Programme on Pacific countries economy and on the Australian industry. They both pledge to monitor the programme and investigate whether seasonal workers are employed under fair conditions in accordance with the SWP requirements and other relevant laws.[134] Besides, the Australian government and each participating country negotiate an assistance programme with the aim of establishing the needed mechanisms for the correct operation of the SWP. The programme focuses on: (i) strengthening Pacific countries' ability to launch efficient marketing policies and boost employers' relationship to increase the demand for seasonal workers, (ii) guaranteeing the quality of workers supply, and (iii) maximising skills and remittances benefits.[135]

Since the reforms introduced in 2015, the Seasonal Worker Programme has witnessed a substantial growth in arrivals and job opportunities, paving the way for the economic development of Pacific countries and of the Australian industry.[136] Furthermore, in 2017 Australia, New Zealand and other Pacific countries have concluded the Agreement on Labour Mobility, whose purpose is the strengthening of Pacific labour mobility cooperation. In doing so, the Agreement aims at broadening regional cooperation and enhancing labour mobility schemes, such as the Seasonal Worker Programme and New Zealand's Recognised Seasonal Employer policy.[137] Accordingly, the SWP framework has been further developed and other opportunities for its expansion have been explored. For this purpose, it has been agreed that greater assistance in worker selection and recruitment processes should be provided, as well as in the promotion of participating countries to employers in Australia. Training programmes shall be enhanced and tax rates on SWP workers reduced in order to maximise the economic benefits of the programme. Besides, the Pacific Labour Mobility Annual Meeting (PLMAM)

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[134] *Ibid*., paragraph "Monitoring and compliance".
[135] *Ibid*., paragraph "Capacity Building for Participating Countries".
[136] World World Bank, "Maximizing the Development Impacts from Temporary Migration: Recommendations for Australia's Seasonal Worker Programme."
[137] Australian Government Department of Foreign Affairs and Trade, "Arrangement on Labour Mobility," 2017, www.dfat.gov.au/sites/default/files/arrangement-on-labour-mobility.pdf.

has been established to integrate and support other forums on regional labour mobility.[138]

An interesting element to consider is how the Pacific Seasonal Worker Pilot Scheme and the Seasonal Worker Program may be considered under the international law perspective. The Pacific Seasonal Worker Pilot Scheme is an initiative of the Australian Government, which decided to involve Kiribati, Papua New Guinea, Tonga and Vanuatu as eligible partners to the programme. The PSWPS is therefore an Australian policy which arranged the cooperation with other four Pacific island countries for seasonal workers employment. Therefore, the application of the PSWPS may be defined regional, since it involves countries of the same geographical region, even though Australia, Kiribati, Papua New Guinea, Tonga and Vanuatu do not form together a regional organisation. A different feature concerns the Seasonal Worker Program, whose implementation is regulated through the stipulation of Memoranda of Understanding between Australia and other partners.[139] Memoranda of Understanding are generally non-binding and outline the rights and duties of the parties, as well as the purposes and beneficial goals of the partnership. They usually belong to the soft law category. Since for both programmes there are no sanctions established in case of non-compliance with their provisions, the PSWPS and the SWP can be both considered soft law instruments.

In conclusion, it results clear how in recent years both the European Union and the Pacific region have deepened the economic cooperation among their members, even though in different manners and through the adoption of distinct instruments. As previously mentioned, the regional coordination achieved within the European Union is unique and peerless, however, the capacity of the Australian government and Pacific Island Countries to develop such a tight and successful collaboration is notable. Of course, many steps need still to be made in protecting seasonal workers and regulating their recruitment and migratory flows, since illegal migration and unlawful employment are crucial challenges that governments are striving to prevent yet.

[138] *Ibid*.
[139] Australian Government, Department of Education, Skills and Employment, "SWP Implementation Arrangements".

2. Issues with the definition of seasonal worker and the example of the Mexican braceros case

The current chapter aims at summarise the findings of the first one, firstly by providing a comprehensive definition of seasonal worker using the definitions proposed in the multilateral instruments analysed in the previous pages. Secondly, attention is given to the particular category of women migrant workers, who suffer discriminations of multiple forms. Finally, the last part of the chapter regards the case of the Bracero Program, which is historically one of the greatest guestworker programs and provides an effective example of the difficulties related to the administration of seasonal workers' flows.

2.1 The definition of seasonal worker

In the previous paragraphs many multilateral instruments concerning the protection and the regulation of seasonal migrant workers have been studied. At this point, a comprehensive definition of seasonal worker is deduced starting from the ones given in such instruments. One clarification needs to be made: the instruments firstly examined did not mention seasonal workers, but they dealt with migrant workers in general. This element may be explained by the fact that seasonal migration has greatly developed in the last two decades, while in the past century it was automatically included in the concept of labour migration and seasonal workers were considered more broadly as migrant workers. For this reason, the primary Conventions and Recommendations regulate the protection of migrant workers, while the subsequent treaties make a distinction between migrant workers and seasonal workers, providing a precise definition of the latter and defining the proper norms for their protection.

In general, a migrant worker is a person who migrates from one country to another for work. The 1990 UN Convention, examined in the first paragraph of this chapter, provides the most comprehensible and inclusive definition, asserting that a migrant worker is a person who is searching for employment or has already been employed in a country of which they are not a national. Accordingly, it can be deduced that if a worker migrates within the territory of their country of origin, he or she cannot be considered as a migrant worker. The country of origin must be different from the country of employment. The 1990 UN Convention is the first instrument who further specifies who a seasonal worker is, namely a migrant worker whose work depends on the passing of the seasons and therefore can be executed only during part of the year. Four elements can therefore be distinguished to define seasonal workers: (i) the country of employment must not coincide with the worker's country of origin, (ii) the migration is performed only for work purposes, (iii) the worker's tasks belong to jobs that depend from seasonal conditions and, for

this reason, (iv) the migration is temporary, because it is performed only during a part of the year.

One important aspect regards whether the definition of seasonal worker should underline the lawfulness of the worker's admission to the country of employment. This question raises from the fact that the 1990 UN Convention is the only one instrument which does not specify that seasonal workers must reside and work legally in the state of employment. The Convention indeed disposes the protection of both regular and irregular workers. Every other treaty does not consider irregular workers, neither in the definition nor in the articles. They rather provide the definition of migrant and seasonal workers explicitly affirming that they must reside and work legally in the country of employment. This feature is one of great concern and debate, since on one hand irregular migrant workers deserve the international protection as regular ones: they are instead subjected to greater abuses than legal migrant workers. On the other hand, the protection of irregular migrant workers is often considered as a tacit consent to the existence of clandestine migration and employment, as if nothing is done to prevent it.

2.2 Women seasonal workers

One peculiar element of discussion regards women seasonal workers, whose position results even more discriminated: not only are they seasonal workers, but they are also women. As a matter of fact, migrant women are victims of multiple forms of intersectional discrimination: the gender-based discrimination leads to other forms of social exclusion, such as class, health, familial responsibility and migration status.[140] Accordingly, in the case of female seasonal workers, discrimination and abuse exacerbate, as threats, blackmail and violence are an intrinsic part of such an exploiting sector as the agricultural one is.[141]

The Council of Europe Convention on preventing and combating violence against women and domestic violence, known also as the Istanbul Convention,

[140] Letizia Palumbo and Alessandra Sciurba, "The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU: The Need for a Human Rights and Gender Based Approach" (European Parliament, Policy Department for Citizen's Rights and Constitutional Affairs, 2018), www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2018)604966, p. 16.

[141] Marie-Laure Augère-Granier, "Migrant Seasonal Workers in the European Agricultural Sector" (European Parliamentary Research Service, 2021), www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2021)689347.

was adopted in 2011 and can be considered as a symbol of the fight against gender-based discrimination and of the awareness that raised on this issue. For what concerns the particular case of women migrant workers, the Convention does not make direct reference to them. However, at Chapter VII, which regards migration and asylum, it nevertheless recognises that adequate protection should be guaranteed to women in terms of residence permits and asylum claims based on gender and women status. In particular, the Convention aims at granting such rights in the case of separation to women whose status depends on that of the spouse or partner. Therefore, women's rights result unbound from their partners' ones.[142] The Convention provisions are the confirmation that women need specific and adequate protection from discrimination, exploitation and abuse perpetrated on a gender basis.

An interesting study conducted for the European Parliament's Committee on Women's Rights and Gender Equality in 2018 highlighted the link between migration and agriculture, with particular attention paid to women migrant workers. The study argues that agricultural production and migration are strictly connected: agricultural labour is low-paid, low-skilled and usually undervalued, and for this reason it does not attract native workers. Rather, agricultural labour demand is met by migrants, who are mainly refugees and asylum seekers, employed under substandard and exploitative conditions.[143] Moreover, the agricultural sector requires mainly seasonal workers and a flexible supply-and-demand system, making it the economic sector where workers risk a higher level of exploitation and abuse in Europe. Even being an EU citizen or possessing a regular stay permit do not protect from sub-standard and exploitative working conditions, as data collected from different EU Member States have demonstrated.[144] As already mentioned, the agricultural sector is intrinsically exploitative and its supply-chain involves different actors: this system tends to diminish the production costs so as to raise profit margins, causing a condensation of workers' rights up to circumstances of serious exploitation and trafficking.[145] Effective control activities are made difficult by the fact that the vast majority of farms in the

[142] Council of Europe, "Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence" (Istanbul, 2011), www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/210, Chapter VII - Migration and asylum.
[143] Palumbo and Sciurba, "The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU: The Need for a Human Rights and Gender Based Approach.", pp. 11-12.
[144] *Ibid*., pp. 12-13.
[145] *Ibid*., p. 13.

European Union consists of family-run small-scale enterprises and the employment of migrants allows employers to avoid administrative and social security obligations more easily.[146]

All in all, it results clear how seasonal workers are constantly at risk of exploitation, since their position of vulnerability does not depend solely on their inherent personal characteristics, but also on the context of the working conditions they are imposed. The temporary element of their employment worsens their situation, since it leads to the circumstance where they do not have alternative but submit to abusive and exploitative treatments in the fear of losing the job and not being able to sustain their family.[147] Besides, seasonal workers are often excluded from the social assistance system, and the circular and temporary nature of their employment ties them to the job, granting less mobility to workers.[148]

Given this premise on seasonal workers vulnerability, it appears evident how the conditions of women seasonal workers are even worse. In recent years Europe, the Americas and Oceania have witnessed a growing feminisation of migration as a phenomenon related to global economic dynamics, since the increase of unemployment rates and the debt weight in developing countries.[149] For instance, since the 1990s, after the dissolution of the Soviet system, many Romanian women had to migrate in order to sustain economically their families. Moving to Western European countries, however, meant meeting a labour segmentation strictly based on race and gender, which limited their job opportunities and undervalued their skills. In this condition, they easily ended up in exploitative conditions.[150] Gendered dynamics and power relations are therefore two of the several reasons why migrant women agricultural workers find themselves in an aggravated position. Their family responsibility makes them submissive towards the exploitative and abusing treatments: they often to dot even report them.[151]

Another study conducted by the World Bank Group in 2018 examined the women's participation to the Australian Seasonal Worker Programme. The findings, unfortunately, are not different from the European situation: when

[146] *Ibid*., p. 14.
[147] *Ibid*.
[148] *Ibid*., p. 15.
[149] Palumbo and Sciurba, "The Vulnerability to Exploitation of Women Migrant Workers in Agriculture in the EU: The Need for a Human Rights and Gender Based Approach.", p. 16.
[150] *Ibid*., pp. 12-13.
[151] *Ibid*., p. 16.

working under the Seasonal Worker Programme, a woman is often characterised by the gendered stereotypes of the ideal wife and mother, who self-sacrifice herself for the wellbeing of her children, being her their primary carer. As common belief, the woman shall spend remittances wisely, but most of all, she shall have the support of her husband and of the community for participating to the programme.[152] This is a crucial element: in order to participate to the SWP and therefore to be economically independent, the wife needs the support of her husband, but she is always reminded of her primary role as mother and wife at home while participating to seasonal work. The majority of SWP participants is nevertheless male: although women and men can equally accede to the SWP, the traditional division of labour based on gendered norms and roles prevent women from participating in economic activities as men do.[153] As a matter of fact, not all women can freely decide to leave home and work under the SWP: their caring responsibilities represent a further limit to start working, as men depend on their wives to look after the children and the house.[154] Besides, women are discriminated also by Approved Employers in Australia, who request for workers of a precise gender and age. Pacific seasonal workers themselves, local workers and backpackers are other groups that discriminate women workers.[155] Despite the negative perceptions regarding women participation to the SWP based on gender stereotypes and the fact that women are not considered suited for working under the programme, women's participation to the SWP is slowly increasing and equal participation of men and women is encouraged by community members.[156]

In conclusion, discriminatory behaviours against women have profound roots in the society deriving from stereotyped gender roles and behaviours. The adoption of multilateral instrument such as the Istanbul Convention and the increasing awareness of such an important issue are essential steps towards the prevention and elimination of gender-based inequality and abuse, ensuring women the same opportunities recognised to men.

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[152] World Bank, "The Social Impacts of Seasonal Migration: Lessons from Australia's Seasonal Worker Programme for Pacific Islanders.," 2018, documents.worldbank.org/en/publication/documents-reports/documentdetail/206071526448586179/the-social-impacts-of-seasonal-migration-lessons-from-australia-s-seasonal-worker-program-for-pacific-islanders., p. 25.
[153] *Ibid*., p. 27.
[154] *Ibid*., pp. 30-31.
[155] *Ibid*., p. 32.
[156] *Ibid*., pp- 34-35.

2.3 A case of practice: The Bracero Program

The Bracero Program is considered one of the best examples of guestworker program in history. It consists of a bilateral agreement concluded in 1942 between the United States and Mexico to face the problem of an increasing labour demand by American growers during World War II. Named Mexican Farm Labour Program Agreement, but known as the Bracero Program, it was adopted from 1942 to 1964 and allowed Mexican temporary farmworkers (*braceros*) to enter the United States.[157] The Bracero Program represents the concrete evidence of how the lack of proper policies and/or their inefficiency often cause the permanence and irregular status of temporary migrant workers in the country of employment.

Before the Bracero Program was initiated, the American workforce was already composed in an important part of immigrants. There was a great demand for cheap and undocumented workers, and this was the principal reason for the constant inflow of illegal migrant workers in the United States.[158] As a matter of fact, the United States immigration policy was characterised by capitalists' demand for foreign workers on one hand, and the domestic labour demand to limit immigration so as to diminish wages suppression and competition for jobs on the other. Accordingly, the Immigration and Naturalisation Service (INS) action intended to control and prevent illegal labour immigration in the United States without damaging the U.S. economy, which depended strongly on illegal immigrant workers.[159] A great portion of such irregular immigrants consisted of Mexicans, who worked in the United States mainly on a temporary or seasonal basis.[160] Since the flow of Mexican workers to the United States was persistent and the Mexican government aimed at discouraging them to emigrate, the Mexican Constitution of 1917 disposed at Article 123 that if a Mexican worker was recruited by a foreign employer, the repatriation costs should be borne by the contracting employer. However, during World War II the United States were coping with labour shortages and an increasing demand for workers. INS agents realized that in order to reduce the number of undocumented Mexican workers, they should simultaneously supply growers with a lawful source of cheap Mexican workforce. They also acknowledged that this solution could be effective only in the short term, since irregular immigration usually exploits

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[157] Anna Bartnik, "The Bracero Program," *Ad Americam. Journal of American Studies* 12 (2011): 23–32, p. 24.
[158] *Ibid*., p. 23.
[159] Marjorie S. Zazt, "Using and Abusing Mexican Farmworkers: The Bracero Program and the INS," *Law and Society Review* 27, no. 4 (1993): 851–64, p. 851.
[160] Bartnik, p. 23.

lawful flows of immigrants, and over the time employers become increasingly dependent on foreign sources of labour.[161] Consequently, the Government needed to adopt an interim program which would have helped them to allow temporary workers enter in the United States. For this reason, in 1942 the American and Mexican governments signed a bilateral agreement, the Mexican Farm Labour Program Agreement known as Bracero Program, which arranged the legal hiring of a specified number of Mexican farmworkers in the United States.[162] Mexican workers were allowed to work for a period not exceeding six months per year and were granted a minimum hourly wage. The recruitment process started in Mexico, where the Government accepted the candidates in line with the Program requirements. The candidates' fingerprints were then recorded and they were finally sent to special camps on the U.S. side.[163] Subsequently, U.S. government agencies arranged employment, wages, working and living conditions, while *braceros* were examined by the American Public Health Service. The agencies that jointly operated under the Bracero Program were the INS in the Department of Justice, the Department of Labour, the State Department, and of course the Mexican government.[164] Even if *braceros* were granted humane treatment by the Program provisions, they were actually subjected to exploitation, abuses and racial discrimination like undocumented workers. The only benefits that regular workers under the Bracero Program enjoyed were the receipt of accommodation, even if in indigent conditions, transportation and food, and a higher assurance they would be paid for their work.[165]

Although the Bracero Program was designed to be a temporary arrangement, it was extended by subsequent amendments. Two Bracero Programs were indeed enacted, the first one from 1942 to 1947 and the second from 1951 to 1964. During the years between the two different terms the INS operated a system of direct employer recruitment of *braceros*.[166] However, there were some oppositions against the introduction and extension of the Program: immigrants already living in the United States were worried about the worsening of their conditions if new immigrant workers were recruited.

[161] Zazt, "Using and Abusing Mexican Farmworkers: The Bracero Program and the INS", p. 851.
[162] Bartnik, pp. 23-24.
[163] Douglas S. Massey and Zai Liang, "The Long-Term Consequences of a Temporary Worker Program: The US Bracero Experience," *Population Research and Policy Review* 8 (1989): 199–226, p. 203.
[164] Zazt, "Using and Abusing Mexican Farmworkers: The Bracero Program and the INS", p. 852.
[165] *Ibid*., pp. 851-852.
[166] *Ibid*., p. 852.

Similarly, Texas farmers raised the strongest oppositions, considering the Program's provisions undesirable and onerous.[167]

For what concerns the growers' side, they had to prove a lack of American workforce willing to be employed in order to recruit Mexican *braceros*. They had also to demonstrate that the hiring of cheaper immigrant workers did not change substantially work and wage conditions in the area. Growers had to pay transportation and accommodation costs through all the employment period as well. Even though employers raised fierce criticisms of the costs they had to undertake, they could not change the terms of the bilateral agreement the United States signed with Mexico. For this reason, growers not willing to hire *braceros* had two alternative options: either raising wages in order to make the job accessible to American workers, or hiring undocumented immigrant workers. Since sanctions against illegal employment were not strictly imposed, the number of irregular immigrants in the United States increased, considerably surpassing in 1945 the number established by the Bracero Program. Researchers estimate that only 13,000 Mexicans arrived legally in the United States between 1942 and 1944, and barely 4 to 7 per cent of the total number of *bracero* contracts were signed during the war period.[168] Fortunately, the collected data showed a substantial improvement during the last two years of the Program: about 146,000 Mexicans were employed. Eventually, during its twenty-three years of adoption, the Bracero Program allowed the American government to issue over 4.5 million work permits.[169]

In order to prevent seasonal workers from staying permanently in the United States, the Government introduced special deposits for braceros workers, where ten per cent of their earnings were first deposited and then sent to Mexican banks. The money was finally sent to the workers after their return to Mexico. The problem was that, although the Mexican government guaranteed for giving the money to workers, many complained that they never received it. Despite the low wages *braceros* earned, they were sufficiently high to encourage many Mexicans to apply for the Bracero Program, since they came from rural, poor communities and were barely literate.[170] At the beginning, guestworkers wished to work for the period of their visa, so as to send money to their families and save a little. They then planned to go home and spend their savings. However, working abroad changed their initial intentions as they experienced different living standards, with good and services that cannot be consumed in the home community. The opportunity to save money indeed elevated the migrant's family status at home, making them

[167] Bartnik, "The Bracero Program", p. 25.
[168] *Ibid*., p. 26.
[169] *Ibid*.
[170] *Ibid*.

desire to continue such way of living. To make this possible, guestworkers had to take additional trips and extend the working period abroad. Moreover, returning workers also represented a concrete example of upward mobility for the other members of their community, who started to migrate abroad for work as well. Therefore, it results clear how working in advanced economies changes guestworkers' initial motivations and leads to additional migration, legal or illegal.[171] As a consequence, during the 1950s the inflow of undocumented workers increased and the *bracero* issue was widely debated in the United States. For this reason, the U.S. government considered legalising irregular workers as the best and easiest way to prevent issues related to the deportation procedure. The decade 1944-1954 is known as the decade of the wetbacks: arrested illegal immigrants (the *wetbacks*) were returned to the ports of entry, where they were legalised as *braceros* and then could stay the United States. However, such a policy led to an increase by 6,000 per cent of illegal Mexican immigrants in that period. Precisely in 1954, the INS launched a large-scale operation of deportations called Operation Wetback. According to the U.S. attorney general Herbert Brownell, Operation Wetback was an inventive and thorough law enforcement campaign to face increasing illegal border crossings.[172] Through a series of road blocks, incursions and mass deportations, more than one million of illegal Mexicans were deported. Mexicans already living in the United States approved the operation, since they believed that seasonal workers worsened their working conditions.[173] Starting from the mid-1950s regulations in hiring documented *braceros* were introduced, and employers unwillingly had to comply with them. From the early 1960s *braceros* entries started to fall, as growers started to introduce machines that could replace human work and, therefore, they became less interested in hiring seasonal workers.[174] In 1964 the Bracero Program was definitely concluded.

As far as the Mexican government is concerned, an interesting aspect to discuss is whether it was a partner or a subservient to United States interests in the application and administration of the Bracero Program. As mentioned before, the Program was officially a bilateral agreement between the American and Mexican governments, but it is argued that the role given to the U.S. Immigration and Naturalisation Service in its administration often put

[171] Massey and Liang, "The Long-Term Consequences of a Temporary Worker Program: The US Bracero Experience", p. 205.
[172] Kelly Lytle Hernández, "The Crimes and Consequences of Illegal Immigration: A Cross-Border Examination of Operation Wetback, 1943 to 1954," *Western Historical Quarterly* 37, no. 4 (2006): 421–44, p. 421.
[173] Bartnik, "The Bracero Program", p. 29.
[174] Bartnik, p. 29.

Mexican provisions and interests in the background.[175] Mexico benefitted from the Program because it gave job opportunities to poor and unemployed Mexicans, and much of the money they were paid actually fed the Mexican economy. The Mexican government had nevertheless some crucial reservations about the Program. The first of all regarded the places of recruitment: U.S. growers wanted to recruit Mexican workers near the borders in order to lower transportation costs. On the contrary, the Mexican government wanted the recruitment to be done in the interior areas, because unemployment rates were higher there and at the Northern borders there was demand for farmers, not farmworkers.[176] Notwithstanding this point was clear on paper, the INS often did not respect Mexico's will and let growers recruit at the border, even letting them preselect specific workers. Secondly, another issue that bothered Mexican authorities was the racial discrimination *braceros* experienced in the United States. As a consequence, Mexico excluded unilaterally Texas, Idaho and other states for several years because of the continuous discriminatory behaviours and acts against Mexican workers.[177] A third matter concerned wage levels, since Mexico made a profit when *braceros* earned enough to send money home. However, the U.S. Department of Labour had a different objective: hiring Mexican farmworkers while, at the same time, preserving the domestic workforce. Last but not least, the increasing number of Mexicans migrating illegally to the United States was another issue Mexico wanted to end. As a matter of fact, irregular migrants are subdued to the worst conditions of exploitation and discrimination, and they cannot appeal to any legal right or make a recourse. Undocumented *braceros* lived in constant fear of being deported or arrested, therefore the Mexican government insisted throughout all the duration of the Program to end illegal border crossings.[178] One element worth to discuss regards the work of Mexican consuls in protecting and assisting *braceros*. For Mexican workers employed in the Southwest area of the U.S. territory, access to their representatives was easier, but little could be done for them. The reason lies in the fact that at the southern border *braceros* were readily replaceable, therefore employers were less prone at negotiating complaints. In the North-western regions, growers were instead more incline at mediating, since if they failed in doing so, they would lose their not so readily substitutable workers.[179] To sum up, the Bracero Program offered entries to the Mexican economy and a safety valve for the discontent originating from high unemployment. At the

[175] Zazt, "Using and Abusing Mexican Farmworkers: The Bracero Program and the INS", p. 856.
[176] *Ibid*.
[177] *Ibid*.
[178] *Ibid*., p. 857.
[179] Zazt, "Using and Abusing Mexican Farmworkers: The Bracero Program and the INS", p. 858.

same time, however, discriminatory behaviours against *braceros* were cause of great concern for Mexican official. Mexico did what the weaker part of a bilateral agreement can do: obtain the achievable, without compromising the validity of the accord.[180]

As mentioned at the beginning, the Bracero Program is one of the most famous programs for temporary labour migration and one of the best examples of how clear and effective policies are needed in order to prevent irregular labour migration or the shift from temporary to permanent stays in the country of employment. As a matter of fact, the Bracero Program was introduced with the aim of preventing illegal migration and decrease U.S. growers' dependence on undocumented workforce, while providing unemployed, unskilled Mexicans with job opportunities. However, this did not happen. It has been argued that the Bracero Program instead boosted irregular and permanent migration to the United States.[181] Firstly, in order to explain why the Bracero Program did not succeed in reaching its scopes, the dynamic and social nature of migration is the primary element to consider. Temporary and seasonal workers do not stop migrating when their visas expire, and immigration does not conclude when labour recruitment ceases.[182] Thus, the Bracero Program could not cause a temporary increase in the U.S. workforce without leading to a permanent increase in the population and negatively influencing the conditions of domestic workers.[183] As introduced in the previous pages, migration leads to more migration, since migrants' incentives and ambitions change while they are abroad. Secondly, during their stay in the country of employment as guestworkers, migrants establish and maintain contacts which enable them to take additional trips, legally or not, and to involve their families and friends in the process. As a consequence, with the increase of trips and the lengthening of the foreign experience, the probability that the migration becomes permanent is notably high.[184] Accordingly, the inflows of workers caused by guestworker programs far exceed the number of visas decided at the beginning. As a matter of fact, it has been demonstrated that the Bracero Program paved the way to large-scale Mexican immigration in the United States during the 1970s and 1980s.[185] Needless to say, even employers misled the law in order to keep their preferred workforce, and they could do so also because sanctions on irregular employment were not rigorously applied. In 1952 the U.S. Congress even passed a law stating that

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[180] *Ibid*.
[181] Massey and Liang, "The Long-Term Consequences of a Temporary Worker Program: The US Bracero Experience", p. 200.
[182] *Ibid*.
[183] Bartnik, "The Bracero Program", p. 30.
[184] Massey and Liang, "The Long-Term Consequences of a Temporary Worker Program: The US Bracero Experience", p. 201.
[185] *Ibid*.

hiring undocumented workers was not considered illegal.[186] A third reason why illegal immigration persisted during the Bracero Program is that increasing numbers of unemployed young Mexican men tried to be selected as *braceros*, but if they did not succeed, they crossed the border illegally and found employment anyway. Even though the Program did not allow family reunification, precisely because it was a temporary labour program, many families came to the United States and settled down.[187]

To conclude, the Bracero Program experience shows how guestworker programs can be efficient and useful, but for their successful application coherent and precise policies are needed. Of course, the Bracero Program was adopted in the last century and in the subsequent years until today laws and conventions protecting migrant workers' rights have greatly developed, but it is important to remind that each step made so far is crucial for the development of better instruments and policies for migrant workers' protection and regulation.

[186] Bartnik, "The Bracero Program", p. 28.
[187] Zazt, "Using and Abusing Mexican Farmworkers: The Bracero Program and the INS", p. 860.

3. Temporary labour migration, circular migration and their economic relevance

While in the first chapter the analysis concerns the multilateral instruments adopted at international and regional level for migrant and seasonal workers' safeguard, this chapter aims at analysing temporary migration and seasonal workers under an economic perspective. In particular, the first paragraph introduces the concept of temporary migration and examines its prominence for migrants sending and receiving countries, as well as for migrants themselves. The second paragraph instead focuses on a particular category of temporary migration, circular migration, providing its definition and illustrating its main consequences on the countries concerned. Seasonal employment is indeed the main and most current example of circular migration.

3.1 Temporary migration

Temporary migration is a fundamental and more ordinary phenomenon than what is commonly believed. Many migrations are temporary, as several studies have estimated in the last decade.[188] As a matter of fact, migration temporariness has important implications for migrants' choices, as well as for the empirical evaluation of migrants' economic behaviour and relevance. The decisions to migrate or, more precisely, to return to the country of origin after a period spent abroad are endogenous to many economic variables, and their effects are evident in migrants' economic decisions for what concerns employment, wages and savings.[189] The core element that associates the economic circumstances in the home country with migrants' economic choices in the host country is the intention of the migrant to remigrate and return to their country of origin. Of course, permanent and temporary migrations are two conceptually different forms of migration, which means that the former is not always the extreme case of the latter.[190]

However, despite its importance, temporary migration has been little studied in economic literature. The reason is quite simple: the poor quality of available data makes it difficult for researchers to assess the consequences of

[188] Christian Dustmann and Joseph-Simon Görlach, "The Economics of Temporary Migrations," *Journal of Economic Literature* 54, no. 1 (2016): 98–136, https://doi.org/10.1257/jel.54.1.98., p. 99.
[189] *Ibid*., p. 100.
[190] *Ibid*., pp. 101-102.

temporariness in migration. Actually, out-migration, i.e., when immigrants leave the host country, generally has never been analysed so far. As a matter of fact, it is not common nor practical to measure out-migration. Improvements have been recently made through the combination of multiple data sources with survey questionnaires results, which has helped to precisely define and examine workers' migration plans.[191] Nowadays countries manage to record and make available thorough data on migratory flows entering and leaving their territory. Such administrative data should always be available, so as to make possible their combination with other additional datasets and finally manage to assess the temporariness of migrants' flows in countries and regions of the world. Information on migrant flows is nevertheless not available for every country.[192] An important point to stress is that some types of temporary migration are often more complex than simple return migrations, which imply the return to the home country after living and working for a determinate period of time abroad. For example, circular migration is far more complex than return migration since it may involve the transit in a third country, and for this reason it is hard to be assessed.[193]

An interesting study conducted by Christian Dustmann and Joseph-Simon Görlach helps in defining and understanding the reasons why migrants tend to migrate on a temporary basis, thus explaining why temporary migration is important. They elaborate a dynamic model, which is extremely useful since not only does it clarify why migrants migrate temporarily, but also defines the ways temporariness affects migrants' behaviour.[194] Accordingly, the importance of temporary migratory flows becomes evident, as well as their effects on migrants sending and receiving countries. In order to simplify the analysis, the model considers only two locations, the country of origin and the country of destination. The reasons to migrate on a temporary basis are illustrated by $V^{L}(\Omega_a)$, where Ω_a indicates state space $\Omega_a = \{a, A, S\}$. In such wise Dustmann and Görlach designate the value to be in country L at age a. Letter A indicates the stock of assets, while S are the individual's skills. Country L belongs to the destination (d) or origin (o) country. The accumulation of skills (S) is represented by the formula: $S_a = S_{a-1} + \theta^{L}_{S}$, where $\theta^{L}_{S} \geq 0$ is the periodic skill stock increase. This variable may differ from one country to another. The authors then assume that human capital considers individual skills according to their productive capacity, which may vary too across countries following the parameter α^{L}_{1}. Therefore, migrants are able to

[191] *Ibid*., p. 103.
[192] *Ibid*., p. 105.
[193] *Ibid*., p. 107.
[194] *Ibid*.

increase their human capital through migration: $H^L = S(\alpha^L{}_1)$. Earnings (Y) may vary from one country to another because of different levels in technological development or because of diverse return rates to skills.[195] Besides, the variable $u^d(\pi,c)$ indicates the per period utility in the destination country, where c is consumption and π is a positive preference parameter, which influence the marginal utility of consumption and indicates the preference for the destination country relative to the country of origin. The utility in the home country is $u^o(1,c)$: as it is noticeable, the preference parameter in the origin country is normalised to one. This means that an individual prefers consumption at home whenever $\pi < 1$. Since the possibility to return home or to stay in the host country is contemplated by the individual at the beginning of each period, according to the value function, the ideal duration of migration is given through the comparison of $V^d(\Omega_a)$, i.e., the value of staying in the host country, with $V^o(\Omega_a)$, which is the value of returning to the country of origin. At this point, it is already clear how the calculation of migrants' choices and behaviour considers many factors that involve several concepts. Considering now the optimal consumption choices in d and o, producing a stock of assets A_a and a skill level S_a, both reached at age a, the period utility in the two countries, $u^d(\pi,c)$ and $u^o(1,c)$, are calculated also evaluating the optimal consumption decision at age a, in the location choice L, which is either the destination country (d) or the country of origin (o).[196]

In the case migration is considered as an investment decision in terms of financial assets or human capital, the alternative is between the current utility gain from returning to the home country now and the future gain from staying in the host country for another period.

Therefore, the model elaborated by Dustmann and Görlach illustrates different reasons for migrating on a temporary basis, all of them calculated on precise variables concerning individual's economic behaviour and choices.[197] In particular, such reasons consider the preference for consumption in the home country, the host country currency purchasing power in the origin country, wage differentials and the accumulation of human capital in the destination country. In the next paragraphs each motive is studied in detail.

The first reason regards the preference for consumption in the country of origin, despite higher wages in the host country. This situation occurs if the marginal utility of consumption is higher in the home country than in the country of destination, i.e., when $\pi < 1$. The opposite situation, a permanent

[195] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 109.
[196] *Ibid*., p. 110.
[197] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 110.

migration, occurs if earnings are higher in the destination country and there is almost no difference between the marginal utilities of consumption in the two countries.[198] Actually, the authors indicate an intermediate solution between temporary and permanent migration, in particular, when the values of being in the two countries are combined with the individual's time horizon. More precisely, the migrant would decide between higher lifetime income and consumption from staying in the home country longer, and the impossibility of consuming at home due to a longer stay in the host country in order to accumulate assets.[199]

The high purchasing power of the destination country currency is illustrated as second motive for temporary migration. It means that prices in the home country result lower, as the country of employment currency has a greater purchasing power there. Accordingly, the migrant saves during the stay abroad and through return migration they increase their level of consumption at home. This situation is valid even if wages are equal between the two countries, as the advantage of returning derives from the different purchasing power of the two countries' currencies.[200] Dustmann and Görlach assume that there is no difference between human-capital accumulation and wages in the two countries. They suppose that the host-country currency has a higher purchasing power than the home-country currency. This situation is represented by: $x > 1$. The cost of staying aborad steadily increases, since the migrant cannot consumed a greater amount of goods in the home country. Last but not least, a higher purchasing power of the host-country currency may be one reason to migrate, but it alone does not produce a permanent migration: the advantage to spend time aboroad is given solely from the fact that the purchasing power of that country is higher in the home country, therefore, the benefit arises once the migrant returns.[201]

The third motive for temporary migration introduced by the authors is the positive wage differential in the destination country with regards to the country of origin. Of course, migration is convenient because wages are higher abroad, and return becomes attractive once skills accumulate and the new skill level increases the migrant's human capital. As a matter of fact, the higher productivity potetial of the migrant in the home country leads to a temporary migration. However, if skill accumulation is low and the wage differential is

[198] *Ibid*., p. 111.
[199] *Ibid*.
[200] *Ibid*., p. 113.
[201] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 113.

very large, migration becomes permanent, as differences in returns to skills are modest.[202]

The fourth and last reason for migrating on a temporary-based is partially linked to the third one, as they both concern skill accumulation. In particular, the authors consider the faster accumulation of skills aborad as a valid trigger for a temporary migration. One emblematic example of this situation are students who study or go for a internship abroad in order to acquire knowlegde faster than in their home country.[203] Skills accumulated abroad are more valuable in the origin country: if they are acquired more quickly abroad than at home, then temporary migration occurs. Despite this case seems quite similar to the preceding one, there is one difference, which consists of the instantaneous gain from returning that arises during the time spent abroad, as the migrant returns with a greater skills stock that will be valued more in the home country.[204]

The assumption that can be easily deducted from the analysis of the motives for temporary migration is that individuals migrate temporarily if there is an improvement in consumption and/or work in the home country after return.[205] This, however, is an assumption made under the migrants' perspective and that concerns the effects of temporary migration on individuals participating in it. Temporary migration has nevertheless important implications also on migrants sending and receving countries. Such implications may be summarised as remittances and brain drain and brain gain for the sending country, while for the receving countries the consequences concern mainly the fiscal impact and the wages and employment levels of native workers.

3.1.1. Effects of temporary migration on sending countries

Remittances have been broadly studied in the economic literature, as they are possibly the most important consequence of migration on countries of emigration.[206] They consist of all transfers from the country of employment to the country of origin, which may be caused by the will to support the family members remained in the home country, the intention to save for future consumption or invesment in the country of origin, or may be viewed as

[202] *Ibid*., p. 114.
[203] *Ibid*., p. 115.
[204] *Ibid*.
[205] *Ibid*., p. 117.
[206] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 125.

insurance against a future return.[207] Of course, the first reason is the most common among temporary migrants, as they are more incline at leaving their family back precisely because of the temporary nature of their migration.

Above all, it is crucial to take into consideration the expected duration of the migration in order to understand the migrant's propensity to remit. Two studies conducted by the U.S. Immigration and Naturalization Service (INS) and by the German Socio-economic Panel have demonstrated that highly educated individuals that migrate and expect to stay aborad permanently remit less than those that plan to migrate on a temporary basis.[208]

Another effect temporary migration can produce on sending countries is what is known as brain drain and brain gain. The term brain drain refers to the emigration of highly skilled individuals from their country of origin, while the expression brain gain defines the opposite situation, that is, high-skilled immigration. Return migration has been argued to be one of the reasons why high-skilled emigration can induce brain gain. Accordingly, returning migrants contribute to the comprehensive skill endowment of their country of origin, causing a beneficial effect even though their initial emigration was positively selected[209] and consisted of a brain drain.[210] Of course, if high-skilled migration is permanent, it does not produce potential benefits in the home country and has only negative effects on it, i.e., a brain drain. Therefore, the benefits of high skilled emigration depend on the type of individuals who migrate and on their plans to return to their home country: as a matter of fact, the brain drain caused by the emigration of skilled individuals can be reduced or even offsetted by their return, if their skills are highly valued in the country of origin.[211]

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[207] *Ibid*.
[208] The two mentioned studies are cited in Dustmann and Görlach's article at pp. 125-126. If further information about the researches is needed, it is available at: *https://nis.princeton.edu/overview.html* for the U.S. New Immigrant Survey, and at: *https://www.diw.de/en/diw_01.c.678568.en/research_data_center_soep.html* for the German Socio-economic panel.
[209] In the economic literature, the expression *positive selection* is used to indicate the emigration of highly-skilled individuals. On the other hand, the term *negative selection* indicates the situation when low-skilled individuals decide to emigrate.
[210] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 126.
[211] *Ibid*., p. 127.

3.1.2. Effects of temporary migration on receiving countries

Of course, immigration temporariness has important effects also on destination countries. In general, and quite obviously, temporary migrants tend to invest less in the host country than permanent migrants do. They rather save and possibly remit more. This particular economic behaviour of temporary migrants has major consequences on host countries' economy for what concerns taxes and productivity. Despite this, temporary migrants usually spend their most productive years in the country of destination, while spending childhood and retirement, the two most expensive periods in an individual's life, in the home country.[212]

As far as temporary migrants' fiscal impact is concerned, it is deeply different from permanent migrants' one. It results clear that temporary immigrants receive lower wages, which implies that they pay lower income rates, consume less and remit more. Therefore, they also pay less in indirect taxes. However, as already mentioned, the fiscal burden of retirement may be born by the country where the individuals spend their old age, which is usually their home country.

Another important consequence of temporary migration, which is often cause of great concern among natives in the country of immigration, is the impact that the employment of temporary immigrants has on wages and employment of local workers. Dustmann and Görlach argue that in the long run the employment of immigrants cause a moving up of native wages' distribution, producing "supply shocks on natives at other parts of the wage distribution than at their initial position, giving rise to an interesting dynamic of wage effects".[213] The temporariness of immigrants' employment may influence the pace by which they move through the wage distribution in the host country. Out-migration leads to a negative labour-supply shock, whose effects depend on who emigrates and where the emigrants were located in the local wage distribution. On the other hand, a constant supply of low cost temporary workers immigrating from abroad may also lead employers to limit the accumulation of capital and shift to labour-intensive production tchnologies. The consequence of this shift is the negative impact on the marginal productivity of labour.[214]

As demonstrated in the preceding paragraphs, temporary migration is a crucial phenomenon, which produces effects not only on the migrants themselves, but

[212] *Ibid*.
[213] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 129.
[214] *Ibid*.

also on the countries involved in the migration process. Substantial progress has been made so far in collecting and recording data on temporary migrants and their effects on the labour markets of origin and destination countries. The next paragraph deals with circular migration, a particular type of temporary migration whose typical example are seasonal workers.

3.2 Circular migration

In the current paragraph the subject is circular migration, which is a particular form of temporary migration whose importance has been increasingly demostrated in the last two decades. The reason why the analyis focuses on circular migration is the fact that seasonal migration is the most common and most often occurring example of circular migration.[215] A more detailed and precise analysis of seasonal workers prominence is provided in the next chapter, Chapter 3, as the Italian and Australian cases are examined.

The rising significance of circular migration results from the positive impacts it may have on the sending and receiving countries, and on the migrants themselves. This is often called in literature *triple-win scenario*, as all the actors involved in the migration process may gain some economic benefits through it. Moreover, circular migration has been the solution for several countries to prevent poverty among their population.[216]

As already argued in the previous pages, migrants' choices aim at optimising their economic, social and personal situation. Furthermore, in the last two decades technological development, relative low travel costs and the increase in communications have made information more accessible and travels more feasible. Circular migrants represent the ideal solution for temporary periods of economic volatility, as they provide flexible and cheap labour force. Migrants themselves benefit from circular migration as well. Regulated circular migration can be considered as a policy concept as well, as it provides a unique legal alternative to labour migration: it represents a solution to stringent and demanding requirements and regulations, it appeases anti-migrant public opinion and meets the short-term excess demand for labour.[217] Although circular migration has several positive impacts both on the migrants and the countries concerned, it has been very difficult to assess its

[215] Amelie Constant, Olga Nottmeyer, and Klaus F. Zimmermann, "The Economics of Circular Migration," 2012, www.econstor.eu/handle/10419/67308., p. 5.
[216] *Ibid*., p. 1.
[217] *Ibid*., p. 7.

implications: the lack and/or bad quality of data have made its empirical study very hard.[218] A little number of countries record the inflows and outflows of their residents, and the situation is even more complex when considering the record of temporary migrants involved in circular migratory movements.[219]

Circular or repeated migration is generally defined as "the systematic and regular movement of migrants between their homelands and foreign countries typically seeking work."[220] It is important to underline that both skilled and unskilled individuals may engage in circular migration. Circular migration should not be considered as out-migration or permanent return migration: out-migration consists of a single movement out of the country of origin into the host country and does not necessarily imply return; on the other hand, permanent return migration is the final return to the home country after a migration trip.[221] Therefore, circular migrants are temporary migrant workers, who regularly move back and forth between their homeland and the country of employment for a consistent period of time during the year, and whose migration is not permanent. As a matter of fact, the self-perpetuating nature of this type of migratory movement is its distinctive feature, particularly when it is unregulated. The main reason is the fact that it encourages future migration, through the exchange of information about labour markets in the destination country and the homeland. Migrant networks play a central role in the spreading of reliable information about job opportunities, working and living conditions abroad, and so on.[222]

All in all, circular migration is highly selective, as the decision to emigrate is based on several variables that strictly define where and when to go. It has been demostrated that highly skilled labour migrants are more incline to mobilisation, while labour migrants coming from less developed countries show very low return rates: this aspect is extremely interesting, as it produces a paradox where immigrants facing less challenges to integration are more likely to leave the host country, in opposition to the ones dealing with more difficulties with social integration who tend to settle down.[223]

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[218] *Ibid*., p. 2.
[219] *Ibid*., p. 19.
[220] *Ibid*., p. 4.
[221] *Ibid*., p. 5.
[222] *Ibid*., p. 6.
[223] *Ibid*., p. 24.

3.2.1. Effects of circular migration on sending countries

Through circular migration, sending countries manage to mitigate unemployment and labour market imbalances. As a matter of fact, the vast majority of migrant workers sending countries record low levels of economic development and are characterised by large groups of available workers, low wages, limited capital and high interest rates.[224] Therefore, their labour market is not attractive and does not provide good job opportunities. Secondly, as already introduced in the preceding paragraph, remittances are an important reason why circular migration is significant both for the migrants and for their home country as well, as they are an integral part of the migratory process. Remittances are resilient to any economic crisis and help in reducing poverty levels of the migrants' families through the increase of the demand for local goods and services. Another important benefit produced by remittances is that they also reduce child labour: especially in the countries with the highest poverty levels, child labour is considered a further solution to economically sustain the household. Thanks to the economic support given by remittances, children may not be responsible to cooperate to the family sustenance.[225] It should be underlined that migrants accept low-paid jobs abroad because they are temporary short-term occupations, which are paid more than in their home country. They can therefore save and remit more, accumulating more wealth in a short time, and eventually benefitting from temporary employment.[226] A third major implication circular migration has on sending countries concerns the accumulation of human capital: especially in the case of returning migrants, the new skills and knowledge accumulated abroad and brought back to the country of origin contribute to the development and investment in human capital and innovative ideas to improve the productivity and knowhow of the economic process. Moreover, highly skilled returnees in particular maintain working networks and important connections for trade and investment abroad. As already argued in the previous paragraph, this is one of the counter examples of the brain drain phenomenon: when migrants come back to the origin country, they basically counteract the intial brain drain effects, producing, *de facto*, a brain gain.[227] Last but not least, through bilateral or multilateral agreements for migratory flows regulation, sending countries

[224] Constant, Nottmeyer, and Zimmermann, "The Economics of Circular Migration.", p. 9.
[225] *Ibid*., p. 10.
[226] *Ibid*.
[227] *Ibid*.

are able to introduce additional arrangements on trade and economic development, achieving further cooperation and aid.[228]

However, despite its beneficial effects, circular migration may have also negative consequences on migrants sending countries. The first, logic implication is the serious labour market shortage that may be caused by the mass out-migration of working age individuals.[229] Remittances as well may have a negative impact on the migrant's family, as they may decide not to participate to the local labour market and live with the earnings given by remittances. The lack of parental care is another serious consequence of circular migration: migrants' children live in families where one parent, or both, periodically leave and stay abroad for defined periods during the year.[230]

3.2.2. Effects of circular migration on receiving countries

As far as the implications circular migration has on receiving countries are concerned, they are several and of different nature. First of all, circular migration provides a flexible cheap labour force, which fills temporary labour market demand in host countries. As a matter of fact, employers hire low-skilled workers without needing to increase wages: this ensures them high profits and low costs.[231] More precisely, the benefits from adopting guestworker programs in order to face labour market shortages are produced exactly by their temporary nature. In general, labour shortages are not durable, as employers' demand for labour increases wages until the demand is met or until the substitution of capital for labour becomes more convenient. The augmented labour costs are compensated by higher prices and slower economic growth. This is because the higher price levels stimulate consumption more than savings, lowering domestic investment as a consequence.[232] Through the importation of foreign workforce under conditions that are advantageous to employers, labour costs are shifted into lower wages to guestworkers. Precisely because guestworker programs are temporary, they represent the ideal solution during periods of economic expansion, but they can be suspended during economic recessions. Consequently, countries of employment benefit from guestworkers' lower

[228] *Ibid*., p. 9.
[229] *Ibid*., p. 12.
[230] *Ibid*.
[231] *Ibid*., p. 8.
[232] Massey and Liang, "The Long-Term Consequences of a Temporary Worker Program: The US Bracero Experience.", p. 201.

wages and the consequent higher levels of economic growth, but they may also export unemployment during periods of recession and shift the costs to other countries.[233]

Moreover, guestworker programs regulate the legal recruitment and employment of young healthy workers from reliable pools, and they are usually low-skilled individuals whose employment does not stimulate the competition with native workers' employment and wages.[234] Guestworkers' work indeed increase the production levels in the host country at low prices, while increasing the demand for goods and paying taxes during their stay. Furthermore, the inflow of young, healthy and productive individuals may also have a "rejuvenating effect" on aging societies in countries of immigration.[235]

However, in the case migrants do not comply with guestworker programs provisions, receiving countries may also face the illegal stay and employment of individuals whose work or stay permit is expired. Even if migrants overstay legally, the receiving country shall deal with increased migration levels and have to provide for the migrants and their families. In the vast majority of the cases, however, if circular migrants overstay in the destination country, it means they have no appropriate documentation, as their stay was predicted as temporary, and they usually bring their families for a long-term residence in the country.[236]

3.3 The (unexpected) consequences of border controls and restrictions to migration

Finally, concerning to the aspect introduced in the last paragraph, two questions may raise, i.e., whether border controls and strict visa requirements may influence migrants' decision to return and, most important, if such restrictions actually help in preventing undocumented migration and the illegal overstay of immigrants in the host country.

Migrants' decisions to return to their home country may be affected by the risk of being prevented from re-entering or staying in the host country. As a matter of fact, particularly in the case of circular migration, the tightening of

[233] *Ibid*., p. 202.
[234] Constant, Nottmeyer, and Zimmermann, "The Economics of Circular Migration.", p. 8.
[235] *Ibid*., p. 9.
[236] *Ibid*., p. 11.

visa requirements or border supervision induces an increase in the cost of immigration or, in the case of undocumented migrants, a rise in the probability to be arrested at the border, forcing the migrants to stay in the host country, even though in an illegal status.[237] Moreover, if migrants are residing illegally in the country of destination, their return may be prevented from strict border controls, which make their illegal residence long-lasting.[238] An emblematic example is the Braceros case dealt in the first chapter, which demonstrated that while the increase in U.S. border controls prevented undocumented Mexicans from crossing the U.S. border, on the other hand they compelled undocumented migrants who had already crossed the border to remain in the U.S..

Altough it seems a paradox, it has been argued that when migrants can freely entry and exit in host countries' territory, they actually tend to migrate more often on a circular basis, rather than emigrate and reside in the host country.[239] Therefore, restrictions to migratory flows do not reduce labour migration, they rather shift migration routes and often make temporary migrants permanent.

In conclusion, even though empirical research on temporary and circular migration is limited, due to the lack and poor quality of data, it has been possible on one hand to define the reasons why migrants decide to enter in such migratory movements, and on the other to assess the implications that such typres of migration have on the migrants themselves and on the countries involved. Of course, the possibility to migrate on a temporary basis influence significantly individuals' choices and behaviours, however, it nevertheless allows them to optimise their economic and human capital gains. All in all, it has been demostrated that circular migration is the ideal solution for labour migration, as guestworker programs represent the proper and flexible answer to temporary labour market demands, without leading to permanent immigration.

[237] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 120.
[238] *Ibid*.
[239] Constant, Nottmeyer, and Zimmermann, "The Economics of Circular Migration.", p. 31.

4. Seasonal workers in Italy and Australia: relating policies and economic implications

The current chapter aims at illustrating the concrete examples of seasonal employment regulation and relevance in Italy and Australia. Indeed, the Italian and Australian touristic and agricultural sectors greatly rely on seasonal workers, therefore, their cases are two emblematic and interesting research subjects.

The analysis begins by providing information on the bilateral agreements each country has concluded so far for seasonal workers' recruitment and regulation. Bilateral agreements are indeed extremely useful for international cooperation on the protection and governance of labour migration. As a matter of fact, the International Labour Organisation has long stressed the importance of bilateral agreements for migrant workers' safeguard, suggesting their adoption in the provisions and guidelines of its multilateral instruments.[240] Bilateral agreements are specific, action-oriented instruments governed by international law and concluded between two States. They clearly illustrate the responsibilities and actions that both ratifying parties must comply with, aiming at the fulfilment of specific objectives. Of course, bilateral agreements' provisions are binding and States must respect them.[241] Bilateral cooperation is achieved also through the conclusion of Memoranda of Understanding, which are softer and usually non-binding instruments, whose adoption is increasingly diffused. Such arrangements are less formal than bilateral agreements and cover broad issues involving common interests of the international community. Being non-binding instruments, Memoranda of Understanding do not need ratification.[242]

Subsequently, and despite the lack of available and reliable data, the second section aims at introducing the economic relevance of seasonal workers' employment for the Italian and Australian economies. The first country examined is Italy, then the focus shifts on Australia.

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[240] International Labour Organisation, "Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review" (Geneva, 2015), www.ilo.org/global/topics/labour-migration/publications/WCMS_385582/lang--en/index.htm., p. 7.
[241] *Ibid*., p. 13.
[242] *Ibid*.

4.1 The Italian study case

Since 1990 Italy has experienced a constant increase of international migrants' inflows, as the United Nations Department of Economic and Social Affairs statistics have shown.[243] Therefore, migratory inflows have influenced the Italian social, political and economic contexts, being them permanent or temporary, since the end of the last century. The top countries of origin are Romania, Albania, Morocco, Ukraine and China.[244]

For what concerns the employment of seasonal workers, in 2019 Italy issued about four thousand authorisations for seasonal work, about one thousand and a half less than 2018.[245] However, the highest numbers of seasonal permits were issued in 2009 and 2010, with about twenty-three and twenty-two authorisations released respectively.[246]

Despite their significance and their important role particularly in Italian horticulture and fruit production, seasonal workers have not been largely studied in the academic literature. This may be due to the fact that it is highly difficult to assess and record their movements and activities, also because they often work under irregular conditions and their numbers are easily underestimated.

Given this brief premise, the following paragraphs deal in detail with the above-mentioned matters.

4.1.1. Bilateral agreements between Italy and partner countries

This section introduces the bilateral agreements Italy stipulated with other States for the employment of foreign seasonal workers in the Italian labour market. The choice not to examine the bilateral agreements regulating the employment of seasonal Italian workers abroad derives from the intention to examine in the following section the significance of foreign seasonal

[243] Population division, United Nations Department of Economic and Social Affairs, "International Migrant Stock 2019: Country Profile: Italy," 2019, www.un.org/en/development/desa/population/migration/data/estimates2/countryprofiles.asp.
[244] *Ibid*.
[245] EUROSTAT, "Authorisations for the Purpose of Seasonal Work by Status, Length of Validity, Economic Sector and Citizenship," https://ec.europa.eu/eurostat/databrowser/view/migr_ressw1_1/default/table?lang=en.
[246] Ana López-Sala et al., "Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy," 2016, https://doi.org/10.13140/RG.2.2.35908.01929., p. 7.

employment in the Italian economy. In such wise, coherence in the topic and homogeneity are preserved throughout all the paragraphs.

Protocol between the Italian and Argentinian Republic on workers' treatment and residence, 1987

The protocol was concluded in Rome, on 9th December 1987 and entered into force on 16th May 1990. The subject of the Protocol are not seasonal workers, but more generally migrant workers who need to temporarily migrate in Italy or Argentina for work.[247] Article 2 establishes that the workers' recruitment shall be subjected to the provisions set in the norms and regulations of the sending country, while Article 3 maintains that the receiving country shall be compelled to issue to workers the authorisations to enter, stay and work in their territory for free.[248] Legal temporary workers are guaranteed the right to freely move within and out of both Italian and Argentinian territories, as Article 4 disposes, with the only exception of limitations due to public order and security or provisions established by other competent authorities.[249] Workers are allowed to bring their spouse and dependent children, whose right to reside in the receiving country is guaranteed for the entire period of employment of the worker.[250] According to Articles 7 and 8, the sending country shall regulate the working ties between companies and their workers, as well as grant to the latter health care and assistance with regard to the norms of the country of employment. Even though the subject covered by the Protocol involves only temporary migrant workers, dependent children are guaranteed the right to attend schools during the stay in the receiving country.[251] Article 11 concerns remittances, in particular it disposes their transfer, which should be facilitated as much as possible by the host country. Temporary workers shall be subjected to the same taxation of native workers, ensuring therefore the right to equal treatment between migrants and nationals.[252] The equality of treatment is reiterated in Article 14, concerning the right to appeal to the judicial authority and be assisted during judicial

[247] Italian Ministry for Foreign Affairs and International Cooperation Website, "Protocollo Tra La Repubblica Italiana e La Repubblica Argentina Sul Trattamento ed il Soggiorno Dei Lavoratori" (Rome, 1987), atrio.esteri.it/Ricerca_Documenti/wfrmRicerca_Documenti.aspx., Art. 1.
[248] *Ibid*., Art. 2-3.
[249] *Ibid*., Art. 4-5.
[250] *Ibid*., Art. 6.
[251] *Ibid*., Art. 9.
[252] *Ibid*., Art. 12.

procedures. Of course, the cooperation between the Italian and Argentinian governments is encouraged in order to grant workers safe and respectful working and living conditions in the foreign country.[253]

Agreement between the Italian and Albanian Republic on seasonal workers' employment, 1997

The Agreement between the Italian and Albanian Republic on seasonal workers' employment was concluded in Tirana on 18th November 1997, and entered into force on 1st September 1998. The Agreement is complemented by a Protocol on the procedure for the employment of Albanian seasonal workers in Italy, which was adopted the same day. The articles are few and their content is very concise. The scope of the Agreement is to encourage the regular flows of seasonal workers between Italy and Albania, as stated in the preamble.[254] Article 1 underlines that the seasonal employment of foreign workers is possible in the case domestic labour markets are facing workforce shortages. The kind of seasonal occupation, the needed competences and the duration of the employment shall be communicated to the other contracting party. It should be noted that the duration of the seasonal employment shall not exceed six months.[255] Workers are given both residency and work permits, and shall leave the host country within five days from their expiration.[256] According to Articles 7 and 8, workers are allowed to transfer their earnings to the home country, but cannot bring their families in the country of employment. Last but not least, social security contributions are transferred too, provided that they are used for social security purposes only.[257] The Agreement is renewed tacitly each year, but if one of the two contracting parties denounces it, then the denunciation must be notified within three months from the Agreement expiration.[258]

The Protocol on the procedure for the employment of Albanian seasonal workers in Italy is an integral part of the Agreement. The Protocol concerns in detail the recruitment and employment procedures that Italian employers

[253] *Ibid*., Art.15.
[254] Italian Ministry for Foreign Affairs and International Cooperation Website, "Accordo tra la Repubblica Italiana e la Repubblica di Albania per l'Occupazione di Lavoratori Stagionali" (Tirana, 1997), atrio.esteri.it/Ricerca_Documenti/wfrmRicerca_Documenti.aspx., Preamble.
[255] *Ibid*., Art. 2.
[256] *Ibid*., Art. 5.
[257] *Ibid*., Art. 9.
[258] *Ibid*., Art. 12.

shall respect in order to recruit Albanian seasonal workers. The employment applications may be nominal or numerical: in the first case, once the application has been approved by the competent authorities, the work permit is sent to the worker; in the second case, the Albanian competent authorities shall select and send to the Italian authorities the names of available workers, their qualifications and the previous jobs they performed in Italy. Preference is given to workers that have already been employed in Italy.[259] Workers shall be given working and living permits within eight days from the entry in Italy, and such permits are valid for the worker and the workplace indicated in them. Workers may also be subjected to some medical examinations, according to Italian law.[260] Article 7 of the Protocol stresses again the right to equal treatment of Albanian workers with Italian ones. If workers do not comply with the Agreement and the Protocol provisions, they will not be employed in Italy anymore. For what concerns the matters not covered by the Protocol, Article 11 disposes that normative reference shall be made to the Italian law concerning entry, employment and residence of workers from non-European countries. Eventually, Article 12 underlines that the provisions of the Protocol shall be applied also to Italian seasonal workers employed in Albania.[261]

Agreement between the Government of the Italian Republic and the Government of the Arab Republic of Egypt for cooperation concerning bilateral migratory flows for working reasons, 2005

The Agreement between Italy and Egypt was concluded in Cairo on 28th November 2005 and entered into force on 1st august 2006. It is complemented by an executive Protocol, which regulates precisely the Egyptian workers' admission procedures in Italy. The scope of the Agreement is to prevent illegal migration and promote an effective governance of migratory flows.[262] Article 1 provides a brief definition of migrant worker, who is defined as a citizen of one of the two contracting parties who is working or is going to work as a seasonal or non-seasonal employee in the territory of the other contracting

[259] *Ibid*., Protocol, Art. 2-3.
[260] *Ibid*., Protocol, Art. 5-6.
[261] Ibid., Protocol, Art. 11-12.
[262] Italian Ministry for Foreign Affairs and International Cooperation Website, "Accordo tra il Governo della Repubblica Italiana e il Governo della Repubblica Araba d'Egitto di Cooperazione in Materia di Flussi Migratori Bilaterali per Motivi di Lavoro" (Cairo, 2005), atrio.esteri.it/Ricerca_Documenti/wfrmRicerca_Documenti.aspx., Preamble.

party.[263] The host country shall regulate the entry, stay and employment of workers, ensuring that such individuals do not represent a threat to public order and security. Workers are allowed to transfer their earnings to the homeland and are guaranteed equality of treatment with nationals for what regards protection and social security provisions.[264] Article 8 underlines that both Italy and Egypt agree to comply with the clauses of multilateral treaties concerning migrant workers' protection they both ratified.[265] Both countries commit to share information on the labour market and on professional qualifications and requirements that are needed to workers.[266]

The executive Protocol is considered as an integral part of the Agreement and was adopted the same day. It provides the guidelines and criteria for the recruitment and employment of Egyptian seasonal and non-seasonal workers in Italy. Basically, the Egyptian competent authorities are committed to compile a list of available workers, while the employment offers shall indicate the kind of job, the number of workers needed, the tasks, the qualifications and job experience requested.[267] According to Article 3, vocational and language training courses shall be organised before departure: workers that successfully pass them are recognised a preferential entry to Italy for working purposes. Of course, eligible workers shall be healthy and fit.[268] Neither the Agreement nor the Protocol refer to the migrant workers' families and the possibility for family reunification. Both the instruments are nevertheless very precise and provide effective guidelines for the governance of labour migration between Italy and Egypt.

Bilateral agreement concerning labour between the Government of the Italian Republic and the Government of the Kingdom of Morocco, 2005

On 21st November 2005 the Italian and Moroccan Governments met in Rabat and concluded the bilateral agreement concerning the regulation and governance of labour migration, which entered into force on 1st June 2007.[269]

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[263] *Ibid*., Art. 1.
[264] *Ibid*., Art. 6-7.
[265] *Ibid*., Art. 8.
[266] *Ibid*., Art. 9.
[267] *Ibid*., Protocol, Art. 2.
[268] *Ibid*., Protocol, Art. 5.
[269] Italian Ministry for Foreign Affairs and International Cooperation Website, "Accordo Bilaterale in Materia di Lavoro tra il Governo della Repubblica Italiana e il Governo del Regno del Marocco" (Rabat, 2005), atrio.esteri.it/Ricerca_Documenti/wfrmRicerca_Documenti.aspx.

According to Article 2, the recruitment of migrant workers is considered a solution to the lack of workforce the two countries may deal with. Of course, both Italy and Morocco shall exchange information about the professional qualifications and requirements needed, as well as monitoring the available job opportunities in their respective labour markets.[270] In order to guarantee the employment of qualified workers, both countries favour the participation to vocational and language training courses for Moroccan workers who are going to be employed in the Italian labour market.[271] The host country shall regulate the conditions of entry, stay and employment, which may be on a seasonal basis or not. Workers are allowed to transfer their earnings in the country of origin, while Article 10 disposes they enjoy the same rights and protection of nationals for what concerns work, social security, social benefits and workers' fundamental rights. However, no reference is made to family members and family reunification.

The Italian and Moroccan Governments met again in Rome on 9th July 2007 to adopt an executive Protocol for the implementation of the 2005 Agreement, in particular for what concerns the employment of eligible Moroccan workers who are going to be employed in Italy.[272] The Italian competent authorities commit to provide detailed information about job opportunities, working conditions, accommodation and social security in Italy. On the other hand, Moroccan authorities shall produce a list of eligible available workers, providing information about their educational and professional qualifications, and their knowledge level of the Italian language. If the required profiles are not listed, Italian employees may contact the competent authorities, which will pre-select candidates according to the requirements needed.[273] The employment procedure contemplates individual working contracts and a medical examination on the employer's charge, as workers have to be healthy and suitable for the job. Vocational and Italian language training courses are also encouraged, whose participants will be listed in a priority list.[274] When the residency permit expires, workers shall live the Italian territory, according to the pertinent Italian law. Eventually, for the matters not covered by the Agreement or by the Protocol, reference shall be made to Italian law

[270] *Ibid*., Art. 3-4.
[271] *Ibid*., Art. 5-6.
[272] Italian Ministry for Foreign Affairs and International Cooperation Website, "Protocollo Esecutivo dell'accordo tra il Governo della Repubblica Italiana e il Governo del Regno del Marocco in Materia di Lavoro" (Rome, 2007), atrio.esteri.it/Ricerca_Documenti/wfrmRicerca_Documenti.aspx.
[273] *Ibid*., Art. 3-4.
[274] *Ibid*., Art. 6-7.

concerning entry, employment and accommodation of workers coming from non-EU countries.[275]

To conclude, as it appears clear, the agreements regulating the recruitment and employment of foreign seasonal workers that Italy signed with other countries cover different aspects of the same matter. Their provisions certainly provide a comprehensive guideline, which results useful for the countries themselves, and for workers and employers, too. One interesting aspect is that the last agreements are quite recent, compared to the earlier ones which were concluded between the 1980s and 1990s. This may indicate that seasonal workers' regulation and protection are constantly evolving issues, which require the development of arrangements that keep up with their expansion.

4.1.2. The role of seasonal workers in the Italian economy

Despite their significance and their major presence among immigrant workers, statistical data on seasonal workers employed in Italy is very fragmented. Moreover, national reports do not record information on a regular basis about this topic.[276] For this reason, assessing the implications of seasonal workforce on the Italian economy is a difficult task.

However, even if few empirical researches have been carried out so far, they reveal some interesting results. For example, an interesting article by Baldoni, Coderoni and Esposti published in 2017 deals with the relationship between immigrant workforce and labour productivity in Italian farms.[277] As previously argued, immigrant workforce is an important factor for economic growth as it consists of relative cheap labour force, particularly in the case of cyclical or seasonal migration.[278] Immigrant workers are frequently employed in less skilled jobs, thus raising the supply of low-skilled workforce in low-productivity sectors. This may cause a reduction in wages and employment of natives in such occupations, especially in the case of irregular immigrant workers who are even cheaper than regular one. Consequently, foreign

[275] *Ibid*., Art. 11.
[276] López-Sala et al., "Seasonal Immigrant Workers and Programs in UK, France, Spain and Italy.", p. 42.
[277] Edoardo Baldoni, Silvia Coderoni, and Roberto Esposti, "Immigrant Workforce and Labour Productivity in Italian Agriculture: A Farm-Level Analysis," *Bio-Based and Applied Economics* 6, no. 3 (2017): 259–78, https://doi.org/10.13128/BAE-23340.
[278] *Ibid*., p. 259.

immigrant workforce is often considered as an unfair competitor of the native one in less skilled jobs. However, when high and low skills are complements in production, immigrant low-skilled workers actually increase the productivity and wages of high skilled workers, which are mainly natives.[279] Not surprisingly, domestic workers tend to avoid bad working conditions and low wages, therefore they usually occupy high skill job positions.

In the last decades Italy witnessed an intensification of low-skilled migrant inflows from developing countries, and immigrant workers were mainly employed either in the Southern regions with high seasonal labour demand in fruit and vegetable production, or in the intensive livestock sector in the North, characterised by a lack of permanent labour.[280] The authors recognise the fact that numbers concerning immigrant workforce in Italy risk to be underestimated due to the presence of undocumented and seasonal workers, whose numbers are difficult to be recorded and assessed. For this reason, the only solution to overcome the issue is to conduct a survey: they use the Italian Farm Accountancy Data Network (FADN) dataset, which provides information about Italian professional farms including their economic size and specialization.[281] In order to examine the role of immigrant workforce in the farms' productivity, the authors analyse a sample of 2,233 farms, which covers the period running between 2008 and 2015. In this period, the employment of immigrant workers increases on average by 33% and seasonal workers in particular represent 89% of the total foreign workforce. It has been calculated that the share of seasonal immigrants on total seasonal workers has been raising during the years of reference, showing how this category of highly flexible workers is increasingly relevant in the Italian agricultural sector.[282] As a matter of fact, between 2008 and 2015 the number of immigrant seasonal workers on the total seasonal share has increased by 31%, while the seasonal average working units have raised by 40%.[283] Particularly in the Southern regions, more than 90% of contracts are seasonal.[284] Therefore, although this article aims at assessing the role of immigrant workforce in the Italian agriculture, it is interesting for this thesis work as the vast majority of such workforce is seasonal, low-skilled and has been steadily increasing in the last years.

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[279] *Ibid*., p. 261.
[280] *Ibid*., p. 262.
[281] *Ibid*., p. 263.
[282] *Ibid*., p. 265.
[283] *Ibid*., p. 266, Table 2.
[284] *Ibid*., p. 267.

The sample was analysed considering the farms' labour productivity, and data indicated generally a positive relation between the portion of immigrant annual working units and labour productivity, particularly in Trentino and Campania in fruits production and horticulture.[285] It should be noted that, however, this positive relationship is the result of a composition effect, i.e., it depends also on the fact that immigrant workers are mostly employed in farms that are more productive in terms of specialization and economic size.[286] The present article nevertheless demonstrates that immigrants are a significant component in the Italian agricultural sector and their relevance is steadily growing. Moreover, it has been demonstrated that almost 90% of immigrant workforce consists of seasonal workers.[287]

Although the cited article does not consist of a detailed economic demonstration of the role seasonal workers play in the Italian economy, it is one of the few available academic sources dealing with this topic. It nevertheless underlines that seasonal workers are not a marginal portion of the Italian immigrant workforce; they rather have been gaining an increasingly great share of it and their work is crucial, as native workers tend to refuse the occupations seasonal workers usually enter. In order to make the studying of seasonal workers more feasible, the competent authorities and institutions should record their movements and employment more accurately and on a regular basis, so that researches would have a reliable and complete set of data to examine. Italy has been progressively involved in the seasonal migration phenomenon, therefore assessing its implications is an important step towards better and more successful future policies.

4.2 The Australian study case

As already argued, when talking about seasonal migration, a crucial role is played by data, statistics, and by relating policies as well. Australia, together with Scandinavian countries and the Netherlands, have been at the forefront in these regards, recording and developing datasets in the most comprehensive manner.[288] As a matter of fact, the Australian Seasonal Worker Programme consents the prompt and efficient recording and monitoring of seasonal workers' flows, controlling also employers' and workers' compliance with the programme's policies. Being the SWP the policy that currently regulates and

[285] *Ibid*., p. 269.
[286] *Ibid*., p. 272.
[287] *Ibid*., p. 275.
[288] Dustmann and Görlach, "The Economics of Temporary Migrations.", p. 105.

monitors seasonal workers' flows in Australia, the following sections deal with its implementation and effects.

4.2.1. Cooperation between Australia and PICs

The first chapter already introduces the Seasonal Worker Programme (SWP), describing its implementation arrangement and the clauses it contemplates. Indeed, the Seasonal Worker Programme regulates the cooperation between Australia and Pacific Island Countries (PICs), therefore it is a policy whose area of application is actually regional. However, its adoption occurs through the conclusion of Memoranda of Understanding between Australia and participating countries, thus it consists of a set of bilateral arrangements too, even though MoU are less formal than bilateral agreements, as previously argued.

The analysis in this section deals with the pre-departure guidebook for seasonal workers. It is an interesting document as it provides useful information for seasonal workers who are going to work in Australia. The guidebook is available in English, but it is also translated into the languages of partner countries. The English and other versions of the guidebook are published in the website of the Australian Government Department of Education, Skills and Employment.[289] The guidebook firstly provides emergency contacts and e-mail addresses if any information or aid is needed. Then, it is divided into several chapters, each one dealing with one particular aspect of seasonal workers' employment and accommodation. Seasonal workers are explained how to be granted a visa and what are the rights and duties rising from it. Then, information about the recruitment procedure and the approved employer is provided, as well as details about employment conditions, working hours and wages. Seasonal workers are also informed about unions in Australia and Australian currency, the deductions that may be applied to their earnings, taxation and remittances. After providing exhaustive and comprehensive information concerning working and financial matters, the guidebook describes living conditions in Australia. The Australian culture, weather and health system are presented, as well as training and skills development opportunities while working in Australia.

[289] Australian Government, Department of Education, Skills and Employment, "Working and Living in Australia: Pre-Departure Guidebook for Seasonal Workers," 2019, www.dese.gov.au/seasonal-worker-programme/information-seasonal-workers.

As it results clear, the Seasonal Worker Programme does not provide solely a policy for the regulation and governance of seasonal workers' flows, but it also includes a complete set of guidelines both for employers and workers. It is probably one of the best examples of seasonal employment programmes worldwide for what concerns also workers' assistance before, during and after the period of employment in Australia.

4.2.2. Evaluation of the Seasonal Worker Programme

The SWP was introduced in 2012 after the Pacific Seasonal Worker Pilot Scheme. The PSWPS allowed the arrival of 1,623 Pacific seasonal workers in Australia, which represented the 65 per cent of its total cap, between 2008 and 2012. Despite the substantial demand for seasonal workers, the numbers reached in the first two years under the SWP did not represent a significant improvement: between 2012 and 2014 about 3,500 workers were employed under the programme, against the total 4,500 cap that was established for the two years together.[290] This initial low participation rate is due to the fact that usually Australian employers employ mainly backpackers and working holiday makers, who represent a low-cost workforce as they are not regulated by the rigid provisions of the seasonal programme and do not need to comply with its requirements. Moreover, growers tend to employ also cheaper undocumented workers, who may be unauthorised residents, Australians working while receiving government benefits, or overseas workers without permit.[291] Fortunately, numbers have increased in the following years, and up to 2017 more than 16,000 seasonal workers participated to the SWP.[292]

For the evaluation of the benefits of the SWP on the Australian economy, different research articles have been written. For example, in 2013 Robert Leith and Alistair Davidson demonstrated that workers under the SWP are more efficient that working holiday makers.[293] Even though in the study they

[290] Jesse Doyle and Stephen Howes, "Australia's Seasonal Worker Program: Demand-Side Constraints and Suggested Reforms," 2015, devpolicy.org/publications/reports/Australias-Seasonal-Workers-Program.pdf., p. 3.
[291] Hay and Howes, "Australia's Pacific Seasonal Worker Pilot Scheme: Why Has Take-up Been so Low?", p. 25-26.
[292] Australian Government Department of Foreign Affairs and Trade, "Labour Mobility Arrangement: Factsheet," 2017, www.dfat.gov.au/trade/agreements/in-force/pacer/fact-sheets/labour-mobility-arrangement.
[293] Robert Leith and Alistair Davidson, "Measuring the Efficiency of Horticultural Labour: Case Study on Seasonal Workers and Working Holiday Makers," 2013,

do not quantify the actual hiring costs for both categories of workers, they calculate the workers' efficiency estimating the average hourly wage and how many tasks the workers complete every hour. Moreover, they report that returning seasonal workers are even more efficient, since they have more on-farm experience than new workers.[294]

In 2018 the report by Zhao et al. extended Leith and Davidson study and aimed at estimating seasonal workers' productivity in comparison with working holiday makers' one.[295] First of all, labour productivity is defined as "a measure of the ratio of output produced and labour input used".[296] Therefore, when the growth in output is greater than the increase in labour input, farm productivity raises. The difference between productivity and farm profitability resided in the fact that the former reflects the efficiency in using inputs and producing outputs, while the latter is determined between productivity and the prices of inputs and outputs. Indeed, the quantity of total outputs sold and their prices determine revenues, while the total inputs used and their prices determine total costs. In the present study, such prices are assumed as exogenously determined as growers cannot influence them. Therefore, under such conditions, in order to increase farm profitability growers shall improve farm productivity.[297] In the study, labour productivity is precisely defined as the quantity of output produced per each hour of work, while profitability is the ratio of revenue to total costs.[298] Researchers use a survey, a wages spreadsheet and interview 32 growers from different regions of Australia in order to collect data for the study. The collected data concern 150 seasonal workers and 109 working holiday makers: the average productivity gain of the former exceed the latter by 20 per cent. Besides, as already argued by the 2013 article, returnees result on average 15 per cent more productive than new seasonal workers, who are themselves 13 per cent more productive than working holiday makers.[299] The reasons for seasonal workers' higher productivity are argued to be their motivation and physical capabilities, as they work in order to earn a high income to sustain the family in the home country

www.dese.gov.au/seasonal-worker-programme/resources/efficiency-study-abares-measuring-efficiency-horticultural-labour-case-study-seasonal-workers-and., p. 3.

[294] *Ibid*., p. 4.

[295] Zhao et al., "What Difference Does Labour Choice Make to Farm Productivity and Profitability in the Australian Horticulture Industry? A Comparison between Seasonal Workers and Working Holiday Makers."

[296] *Ibid*., p. 8.

[297] *Ibid*.

[298] *Ibid*., p. 9.

[299] *Ibid*., p. 14-15.

and are generally used to working in hot and humid conditions.[300] In general, seasonal workers' reliability and experience are two of the major factors positively valued by growers.[301]

On the other hand, another study demonstrated that seasonal workers are also innovation and skills transfer triggers, being the SWP a temporary and circular program that regulates also return migration.[302] Indeed the programme provides significant opportunities for knowledge circulation among seasonal workers, their home community and the Australian labour market, which overcome the brain drain shortcomings.[303] This factor suggests an important role of the SWP in boosting the development and improvement of horticultural activities productiveness in Australia, being seasonal workers the vehicles of knowledge, expertise and innovation.[304] Moreover, not only does the host country economy benefit from the skills transfer, but also the workers' households in origin countries once that workers return and share their acquired knowledge, beside the profits of remittances.[305]

In conclusion, seasonal workers' employment under the SWP results profitable and successful from several perspectives, from farm productivity to knowledge transfer. Above all, the Seasonal Worker Program is a valuable and effective policy for employers' demand for flexible, temporary workforce, and its use has been largely increasing since the first years of its adoption, as a confirmation that it has been rightly chosen as the proper solution to temporary labour shortages in Australia.

[300] *Ibid*., p. 17.
[301] *Ibid*., p. 18.
[302] Olivia Dun and Natascha Klocker, "The Migration of Horticultural Knowledge: Pacific Island Seasonal Workers in Rural Australia - a Missed Opportunity?," *Australian Geographer* 48, no. 1 (2017): 27–36, https://doi.org/10.1080/00049182.2017.1272528., p. 29.
[303] *Ibid*.
[304] *Ibid*., p. 31.
[305] *Ibid*., p. 33.

Conclusion

The seasonal workers issue is clearly a manifold and difficult phenomenon to examine, as its governance involves different disciplines and it occurs both under regular and irregular conditions.

The present thesis work aimed at demonstrating and providing data about the importance of temporary labour migration, which has been often underestimated as a social and economic phenomenon precisely because of its temporary nature. Moreover, seasonal workers represent the most fragile category of temporary migrant workers, therefore their conditions are emblematic and crucial to study. Indeed, Italy and Australia have been chosen as examples to provide empirical evidence of the instruments and policies their governments have enforced for seasonal workers' flows governance and supervision.

The first element of discussion deals with international law multilateral treaties for seasonal workers' protection, examining their content and which commitments their adoption carries for ratifying states, both at international and regional level. Seasonal workers are not directly mentioned in the earliest documents, as a confirmation of the little knowledge and consideration the international community paid to this particular type of migrant workers. Only in the most recent instruments direct reference is made to seasonal workers, suggesting a development in the legal discipline for what concerns their safeguard. Throughout the analysis it becomes evident how migrant, and in particular seasonal workers, require the enactment of both human rights and workers' rights provisions, being them a fragile and mostly discriminated category. However, a key-point concerns the protection of irregular migrant workers, whose numbers often exceed the regular workers' ones and therefore raise great concern among States and international organisations. The issue has been widely discussed by experts worldwide, as the protection of undocumented workers is often considered as a tacit consent to their existence. Their safeguard is nevertheless fundamental, as the irregular nature of their journey, employment or residence in the host country paves the way to further discriminatory and degrading treatment. An even worst position is occupied by women migrant workers, who are discriminated also on a gender basis, and therefore their protection needs to be regulated by specific instruments which consider this multidimensional type of discrimination. The hope is that in the next future States' interests will not be dominant over migrant workers' rights, as it has often been the case until now. International labour migration is an increasingly important component for the economic development and

sustenance of entire regions in the world: its proper regulation is fundamental, as well as States' participation and commitment to it.

Secondly, the analysis shifts to the economic analysis of temporary labour migration and circular migration, as seasonal workers are particularly involved in the latter type of labour migration. The analysis demonstrates that temporary and circular migration actually produce benefits both for migrants sending and receiving countries, as well as for the migrants themselves. Indeed, researchers often talk about a *triple-win scenario*. Remittances, human capital accumulation and higher earnings are the main benefits raising from temporarily migrating abroad and then returning to the home country. It appears clear that when individuals decide to migrate on a temporary basis, their decision is mainly based on the improvement of the quality of life in the home country after return. When talking about circular migration, it should be noted that it is highly selective and it mostly suffers from borders controls and migrants' inflows restrictions. Indeed, it has been argued that the enforcement of tighter border controls or restrictions does not prevent the arrival of immigrants to destination countries, it rather shifts the migration routes, paves the way to illegal migration and often make temporary migratory flows permanent.

As far as the Italian and Australian study cases are concerned, they both confirm the findings of the preceding theoretical sections. Both countries have engaged in regional and bilateral cooperation for the regulation of seasonal workers' flows, through the conclusion of multilateral and bilateral agreements. Being Italy a Member State of the European Union, the instrument with regional application for seasonal workers' protection was the 2014 Directive, adopted within the framework of the European Parliament and of the Council. However, the same circumstance is not valid for Australia and the Pacific region: in order to conclude a multilateral instrument with regional application, Australia promoted the Seasonal Worker Programme, whose application occurs through the conclusion of Memoranda of Understanding between Australia and each Pacific Island Country. Seasonal employment is crucial in both countries' economies and labour markets, as it represents a valid solution for temporary workforce shortages. Both in Italy and Australia seasonal workers are employed mainly in the agricultural and touristic sectors, which highly benefit from seasonal employment. It has been demonstrated that seasonal workers increase farm productivity and are vehicles for knowledge and skills transfers, within the workplace and also in the home country after return. Therefore, it can be assumed that if seasonal workforce is regulated and employed in a proper way, it represents an opportunity for innovation, economic development and human capital transfer.

One aspect should be underlined: the research for data and statistics was quite difficult, especially for what concerned the two countries' study cases. Most of all, data about the Italian study case were few and limited on a great extent. While the Australian seasonal programme is the one policy that collects data and regulates seasonal employment, and therefore searching for information is quite easy, Italy has fragmented policies and few information on seasonal workers' relevance on its economy. Moreover, Italian competent authorities have not recorded numbers and data on a regular basis, making the research even more complex. Of course, recording numbers on seasonal workers is a complicated task, as their movements are many and it is difficult to trace them. However, the Australian case shall be an example of how to manage and record seasonal workers' flows, consequently increasing the quality and availability of relating data.

In conclusion, it emerges that temporary and seasonal migration are important and widespread phenomena, whose effects are positive for several reasons. Governments should commit to cooperate more in their regulation and in the protection of workers who engage in such types of labour migration. In particular, workers should be granted the right to work and live in host countries under legal and humane conditions, hence preventing their exploitation, abuse and discrimination. In such wise, the benefits arising from seasonal employment of foreign workers would be enhanced and multiplied for all the actors involved in the process: the home country, the country of employment and the migrants themselves. Of course, this scope cannot be reached without the cooperation of employers and growers, who should cease the employment of irregular workers. In order to do so, programmes that facilitate the employment of seasonal workers should be developed and implemented, based on the example of the Australian Seasonal Worker Programme and other successful models in other countries, such as in New Zealand and Canada. The scope should be to grant more equitable, humane and profitable working conditions for seasonal workers, whose work is substantial but highly underestimated, and happens mostly under irregular conditions.

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