COMMISSION ON SECURITY AND COOPERATION IN EUROPE

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MIGRANT WORKERS SEMINAR

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OPEN SESSION

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Thursday, April 21, 1993

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The briefing was held in Room 2359 of the Rayburn House Office Building, Washington, D.C., at 2:00 p.m., Sam Wise, Staff Director of the Helsinki Commission, presiding.

Present:

MARIA ECHAVESTE
MIKE HANCOCK
LINDA DIANE MULL

Also Present:

LORI ROTTENBERG
BEA BOBOTEK
SPEAKERS

MARIA ECHAVESTE, Head, United States Delegation Administrator, U.S. Department of Labor’s Wage and Hour Division

MIKE HANCOCK, Executive Director, Farm Worker Justice Fund

LINDA DIANE MULL, Executive Director, Farm Worker Opportunity Programs
Director Wise. I think we'll get started because our afternoon time is limited, and we'll leave the door open if others come in.

My name is Sam Wise. I'm the Staff Director of the Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, which, as some of you may know, is primarily a commission associated with the Congress. Our leaders are Senator DeConcini and Representative Hoyer, and we have eight other members from each House and three Executive Branch members, which makes us a little unusual as far as U.S. government organization is concerned.

And, our purpose, since our foundation or establishment by law in 1976, has been to promote and observe the implementation of the Accords of Helsinki for the CSCE, with special reference, though, to human rights concerns.

And, in pursuit of that, we have, not only joined and led in investigations of human rights abuses in other CSCE countries, but we've taken a look at our situation here in the United States in various areas. One of the areas is the migrant labor.

The seminar that took place recently that we
are here to discuss was organized by the Office for Democratic Institutions and Human Rights of the CSCE, which is located in Warsaw, and this office has held a number of seminars now on various subjects, and this one focused on the question of migrant workers, which is a subject which has a very definite formation in Europe and somewhat different focus, I think, here for us in the United States.

There is language pertaining to migrant workers in various CSCE documents, beginning with the first one, which was the Final Act in 1975. I remember someone who has been involved for a long time in CSCE, in the early days the United States government always used to sit back when the question of migrant workers came up, because in the Final Act it talks about migrant workers in Europe, and we always said, oh, Europeans do whatever they want to about migrant workers, that doesn’t apply to us.

Well, our Commission has taken the position early on that it should and does apply to the United States, and I think other countries have accepted this view as well.

I have, fortunately, today some distinguished members of the United States Delegation to the meeting, which I did not attend, but two of our
staff members here did, and I don’t know whether all of our panelists were on the Delegation or were public members. I don’t know whether there’s a difference.

Let me make the introductions, and then they’ll have a few remarks to say, each of them, and then we’ll welcome questions from the floor.

The head of the Delegation is Maria Echaveste, who was the head for the United States, and she is currently Administrator of the United States Department of Labor’s Wage and Hour Division, and is responsible for the management and policy direction of programs related to federal wage and employment standards, migrant and seasonal labor, child labor and immigration-related programs.

So, why don’t you begin then, and I’ll introduce the others as we come along.

Ms. Echaveste. Good afternoon, everyone.

We, I think, are going to have a fairly informal, and I encourage everyone to come closer, but to have a dialogue and share with you all whatever information we were able to obtain when we were in Warsaw.

Let me first explain that our Delegation consisted of two representatives from the U.S. Department of Labor, myself and one of our District
Directors, Norma Adams, who is based in Albuquerque, New Mexico, and I had thought that it would be useful to bring someone who had more hands-on experience with enforcement of laws that relate to migrant workers in this country. When we say migrant workers, we are usually talking about farm workers, and workers traveling within this country. And so, we brought Norma with us. Additionally, we had Luis Torres, who is a Consultant and a researcher and had been staff on the Commission on Agriculture Workers, has some expertise in immigration, and Mike Hancock, with the Farm Worker Justice Fund. Additionally, we had Rob Williams from the Florida Rural Legal Services. We also had representatives from the State Department, from their Refugee and Immigration desks.

We went, not knowing, I confess to you, very much about the Commission’s interest in this issue, but felt that we could at least share our experiences in this country. We understood that one of the motivating forces for the seminar had to do with issues that were quite on the front page in Europe, relating to migrant workers, and their definition, which seemed to limit it to legal migrant workers, temporary guest workers, but not temporary as in seasonal, but rather for years at a time.

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I would say that the three things that I came away feeling that we had accomplished as the U.S. Delegation, and learned, and was significant that I think will color a lot of what, certainly, I will look at in the course of my work, was first, when we got to the Delegation and we made our opening statement, we placed great emphasis on the fact that when you discuss workers, and workers who travel, that you have to speak of illegal, or as they call it in Europe, irregular workers, that is, people who don’t have legitimate work authorization, because you can only understand the impact on labor and then the subsequent impact on social and community unless you take into account that there is illegal.

And, it was interesting that the first two days of the seminar, it was basically the U.S. Delegation that kept making reference to illegal as the component that had to be part of the discussion as we looked at these issues.

And, it was very reassuring that by the end of the seminar there were several other delegations that acknowledge that it would behoove the Commission to think of, when it spoke of migrant workers, to think of the irregular workers, the Netherlands was one that echoed and acknowledged that, in fact, it was
an issue and should be dealt with.

The second thing was an understanding that when we look at the problems that are faced by workers in the host country or the receiving country, which often times have to do with workers being treated differently or not being afforded, or put bluntly, exploited by the employers in the host country, that one possible response to that tendency to exploit workers who come from other countries, who may not know the language, who are isolated, who are thus vulnerable to exploitation, is an international set of worker standards.

And, we learned much about two, not competing if you will, but two alternative sets of standards, one that has been pushed by the International Labor Organization, the ILO, and one that has been developed through the United Nations.

And, I think that we understand that a person response to exploitation is a minimum set of working condition standards. So that, workers traveling from country to country have some basic rights and expectations about how we will be treated, about payment, about conditions under which they will work, which should, in the ideal world, reduce the incentive for employers to seek out foreign workers as
a way of minimizing their costs.

A third recommendation that had been proposed initially by our keynote speaker, Doctor Jan Neeson, was the idea of regional conferences, that is, that in order to have some really sort of roll-up-your-sleeves strategies that could work, how can we address issues, that he advocated regional conferences. And, it's certainly one that we picked up on, the U.S. Delegation, and that by the end of the seminar several other delegations were also quite in support of, because we think that certainly for North America a regional conference that would bring together some of the countries and players on both legal and illegal workers that come into our country, and come into Canada, Canada was also a very important participant in the seminar, could lead to strategies as a way of really following up. You know, it's all very fine and good that we have a seminar, and we all have to understand that when we are looking to improve things or address problems, the first thing we need to do is educate ourselves, and this seminar was one of those education tools.

The next step then is always how to use that education in some way that is real and meaningful. And so, we certainly came back thinking that we would
like to work with whatever the appropriate agencies, authorities, organizations to look at regional questions and try to address some of those concerns.

So, I would say that it was an education. This was a first step.

A theme that the U.S. Delegation was able to provide to the European countries is the whole question of, what do you do with workers who are culturally and language different from you when they’ve stayed many, many years in your country, and it really became quite apparent that if you don’t have, as this country has, a culture sort of based on immigrants coming to your country, you really are at a loss for how to deal, how to incorporate these distinct populations.

And, it was very interesting, I think, speaking only for myself, very interesting to observe the difficulties that many of the European countries were having with adjusting to the fact that there are people who live in their country, who speak now either German, or Dutch, or French, and who consider themselves, in spirit if not legally, German, or French or Dutch, and the countries aren’t quite able to cope with that. Some countries have decided to adopt a more integrationist model of really trying to
recognize that these people live and work in that
country, others are struggling with it.

But, I think that our Delegation was able to
share experiences that highlighted some of the
pitfalls, but certainly some of the benefits, of that
more inclusive model.

I will say that given the differences among
our Delegation, people were quite frank in assessing
and explaining and sharing with other countries' delgations the problems that we have in this country.
We did not paint a rosy picture of everything is fine
and dandy, and we welcome all immigrants, and we treat
them all, it's really more that our ideals are one to
treat all people without our boundaries equally, but
we also explained that in many ways we have fallen
short of that. And also, alerted them to some of the
things that are happening in our country regarding the
recent real xenophobic and anti-immigrant attitudes.

So, it was a very frank discussion, and I
think that sort of was the overview, and I'll close
with that, but certainly will be happy to answer any
questions.

Thank you.

Director Wise. Thank you, Ms. Echaveste.
Our next member is Mr. Mike Hancock on my left, who is Executive Director of the Farm Worker Justice Fund, a non-profit organization providing legal assistance, public education and legislative representation, an expert on international and domestic law regarding migrant labor and immigration. He served as a public member on the U.S. Delegation to the seminar.

Mr. Hancock?

Mr. Hancock. Thank you, Mr. Wise.

I find myself in the unusual position of agreeing with a high-level official of the Administration. It's a new experience for me, and I hope I get more comfortable with it. But, I think Maria accurately described both, sort of the atmospherics, but also the specifics of what was discussed, and debated and puzzled over. So, I won't go over old ground.

I'd like to share with you a few of my thoughts on what happened in Warsaw, what I came back with from that experience, and what I think we can all learn from that.

I have to start by saying that much of the work that was done, and I think most of the beneficial work that was done in the context of this seminar, was...
done before we ever got there by the Commission staff. They worked long and hard and very fruitfully to document the problems that we have in the United States in our treatment of migrants. And, they, compellingly, laid that out in a publication that I'd recommend to everyone, because I think it paints a realistic, kind of a bleak picture of the conditions of farm workers in the United States, and I commend the staff for all their hard work and the marvelous product that came forth.

What I went to Warsaw to learn, and what I think I came back with a better understanding about, was the international dimension to migrant labor issues, particularly, legal protections. Like a lot of Americans, I tend to be fairly inward looking and didn't ever really make a systematic effort to educate myself on how other countries deal with many of the issues that we wrestle with, largely unsuccessfully when it comes to migrant labor.

And, I came back, both encourage that there are solutions out there, but also chastened that there are penalty choices that we have to avoid if we make some of the mistakes that we've seen other countries make.

On the positive side, I think I came back
largely confirmed in my notion that other countries have found that they can protect at least the terms and conditions of employment of migrant workers. With all the problems that we've heard, and many of them are real, with the migrant workers in Germany, it's never been a strictly labor problem. Most of the migrant workers that were brought into Germany in the '50s and '60s found that they were brought in and afforded basic protections of terms and conditions of employment, much like that of German citizens. And, we haven't found a way to crack that nut, either for undocumented migrants who are working in the United States, legal guest workers that come into the United States under the H2A and the H2B programs. In those cases we have not found a way to extend basic labor rights to those workers.

And, while I'm not sure that the German model or any other models that we were exposed to during the course of this seminar can be imported here, I think that they have found solutions that seem to escape us. I think we need to redouble our effort.

The other thing on labor issues that I came back with was that there have been a lot of energy, a lot of work, and a lot of good creative thinking that's gone into international conventions, both at
the U.N. and at the International Labor Organizations, directly and specifically aimed at the conditions of migrant workers.

And, I am sad to say that despite all this work the United States government has not seen fit to ratify these conventions, nor have they seen fit to try to conform, even short of ratification, conform the laws to meet the principles set out in these conventions.

And, while they are largely directed at legal migrants, there are protections in there for undocumented workers, and there are protections in there for migrant workers generally, but I think if enacted here would have a measurable beneficial effect on migrant farm workers.

And, I would be interested to further understand why the U.S. has felt it necessary to let those conventions languish, particularly, with the new stated administrative goal of trying to impose international labor standards as a condition for free trade and other measures. I think that there's a bit of hypocrisy involved when we urge this on others and aren't willing to take the step ourselves.

And, I hope that we, in the next two or three years, can further explore whether or not we can
move on in those areas. I happen to hold the opinion, I think this is true, that one of the problems is, is the H2A Foreign Labor Program for Agriculture is out of conformance, and would have to be changed if the conventions were ratified.

I don’t think that any of us painted an unrealistic picture of the conditions of migrant farm workers in the United States, and, in fact, and to Maria’s credit as a representative of the U.S. government, was fairly frank in acknowledging that many of the problems that have persisted in a lot of these many decades persist today, and a frank acknowledgement that we have a long way to go and have an obligation to try to solve some of those problems.

On the broader scale, I came back, much to my surprise, with a lot of my sort of latent nationalism confirmed, inasmuch as with all the problems that we have here, and there are many, I think in our overall treatment of immigrants we have been much more and, perhaps, the current episode of xenophobia which reoccurs without too much predictability, but overall I think we’ve had a much better experience in opening our society and including people in this society, when compared to the European countries.
But, I also think that the Europeans offer a cautionary example for us, that this xenophobic, racist, anti-ethnic fervor that seems to be sweeping this country runs great risks of going down a path that we’ve seen in some of the European countries, who have been unable to open their society and fully integrate foreign populations into their society, Germany being the most visible example, but not the only example.

And, I think that we can learn from that experience and understand that if a national government, either through affirmative policies or through neglect, can foster a climate in which ethnic and racial discrimination and violence can take root, and it’s very difficult to eliminate that once it takes root.

I think that we also, frankly, can be an example to the other members of the Helsinki Accords on how to be a multi-racial, multi-ethnic, multi-cultural society, and have much in our history that leads us in that direction, but this means that we have to resist the sort of cheap and easy political fix that is currently in vogue, and face the real problems and not scapegoat new immigrants.

Finally, I would like to, and I’ll wrap up
in a moment, I would like to suggest that there are three things that I came back feeling that we need to do. I think we need to systematically look at the international conventions and see what we can learn about better protections of the social, cultural and economic rights of non-citizens living and working in our country. Too often, we want their labor, but are not willing to extend to them the sort of protections and basic human dignity that I think they are entitled to. So, I think there are things we can learn from the conventions, and I would hope that we embark on that path.

The second thing, and just to reiterate something that Maria raised, I think there’s much to be gained from a similar process on a regional basis, with the countries in the regions that currently send migrants to this country, Central America, Mexico, the Caribbean, Canada and the United States I think would benefit greatly from some effort to exchange ideas, to try to come up with similar solutions to the current problems of migrant workers, and would hope that there’s some opportunity to further examine that possibility.

Finally, nothing changed in my long-held belief that we must strictly and vigorously enforce
labor standards, not just for farm workers, but for all low-paid immigrant industries, not simply to protect the rights of those workers, documented or undocumented, but also to protect the low-wage labor market as a whole against the pernicious effects of employers who try to take advantage of low-wage immigrant workers to the detriment of everyone.

And, I think that’s a policy that Maria is pursuing at Wage and Hour. I hope that’s a policy that has the support of this government, and I think it ought to be pursued vigorously if we have any hope of ever extending basic human dignity to migrant workers.

Thank you.

Director Wise. Thank you.

Our next speaker is Linda Diane Mull, who is the Executive Director of the Association of Farm Worker Opportunity Programs, which is the National Federation of Organization that provides farm workers with employment training and other services through 450 field offices. She attended the seminar as a representative of a nongovernmental organization, and in a sense, in the CSCE parlance, as sort of a private citizen, but I think she was able to participate like the other ones were as well, as the Delegation
members.

Ms. Mull?

Ms. Mull. Thank you, Mr. Wise.

I'd like to also thank the Commission on Security and Cooperation in Europe for this opportunity to allow me to speak at this briefing today, but also for the receptivity that there was in Warsaw from the Commission staff, from the Vienna CSCE staff, from the State Department personnel, and also from Maria Echaveste as the Head of the Delegation, with the strong encouragement for myself as a nongovernmental organization to speak openly. I think that speaks of the rights that we have in the United States to free speech, and to get the open encouragement to do that, helped to facilitate the activities that I undertook while I was there.

I was not an official part of the Delegation, but as a representative I found myself linking with many other nongovernmental organizations that were in attendance.

I would have to say that I felt that the majority of the benefits that I got from attending the seminar was probably not so much in the plenary sessions, but in the discussions and in the time spent with other governments, talking with other government
officials, and with other nongovernmental organizations representing migrant workers, to learn of more specifics about the circumstances of migrant workers, who migrant workers are in their countries, what are the labor standards that are offered for the workers, what are the circumstances, and the conditions, and the experiences that they have within their country, and then sharing that experience that we have here in the United States with them.

I probably spent less time with the Delegation than I spent with the other NGOs and the other representatives from the other countries.

But, the thing that I found was a general concern, a great concern internationally, that the United States has not signed onto the conventions that would offer important protections for migrant workers, both within our own boundaries, and the encouragement that that would offer by the U.S. signing and ratifying these international conventions, the encouragement that it would make for other countries as part of the CSCE to also ratify and sign onto the conventions.

While we advocate for the human rights in other countries, it seems that that’s an area that we should focus on advocating for the human rights of
people within the United States.

The thing I came away with, and I probably speak more of the day-to-day, hands-on type person, because that's the place that I come from, European and U.S. migrants do face some similarities, and they do face some differences.

What I found is that in my discussions U.S. and European migrants both face discrimination, low wages, educational deficiencies, lack of job placement and training opportunities, difficulties integrating into the host communities, and an inability to have a voice in the political process unless they are a citizen of that country.

We have a huge number of permanent residents in the United States, permanent residents, except in the State of Maryland and in the locality of Takoma Park, are unable to vote in local elections. If you do not have a voice in the political process, you do not have a voice in the outcome of how your tax dollars, or how the political process works.

However, in the U.S., U.S. farm workers or migrant workers face something that European migrant workers do not. All workers in Europe, whether they are employed in agriculture or not, are protected by the same level of labor standard protections as all
other workers in the country within the European Union. But, the U.S., except for civil rights, every labor standard that applies to all other workers allows exemptions under the federal law for agricultural industry. This results in agricultural workers, migrant workers, being relegated to a life of cyclical poverty, and as an occupational group being legally discriminated against.

I brought a chart here to give those of you who may not be familiar, or who may suspect that this isn’t the case, a representation of what labor standard protections are in the United States. If this was a European map, the whole European map would be white, because white would mean that every worker was eligible for the same labor standard protections. But, what we have in the United States is 73 percent of the states offer less than 40 percent of the coverage for migrant workers that they offer for everybody else.

There is inequality in the labor standard protections that we offer here, and that is diversely different than the situation that you have in Europe. In Europe, the decision was made early amongst the states that participated in the European Union, that they were not going to face this problem, that it was
too difficult for a worker moving from one country to another country to have to figure out what are the laws here versus what are the laws in another country. It's too difficult for employers, and it's too difficult for the workers, and it's too difficult to enforce. So, the decision was made early that we would uniformly apply the same labor standard protections across the board.

But, in the United States, we set a federal minimum for farm workers, which even in the best state in the United States, which is California, farm workers are still only eligible for 80 percent of the protections that are available to all other workers. And, in five states in the United States, less than 20 percent of the coverage is available for agricultural workers. This is a stark, I think, realization. I mean, it reinforced for me why equal labor standard protections in the United States must occur for farm workers.

For some reason in this country, we refuse to acknowledge that farm workers are entitled to the same basic job protections that other workers receive. The issues supersede the interest of farm laborers, actually. It reflects on how we view the rights of individuals within our society.

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By failing to stand up for farm workers, we risk establishing a class system that puts the rights of some above the rights of others.

To continue to allow inequity in labor standard protections speaks volumes about the integrity of a civilized society. If we fail to protect adequately all segments of the work force from job hazards, we create a class system that defines the rights of some workers as superior to those of others.

To know that these individuals are largely minority and immigrant workers speaks to an even more egregious form of discrimination.

Clearly, such a notion does not follow the principles of our society, but unless we recognize that and act appropriately to stop it, we are condoning and becoming a part of the problem.

As a result of my participation with the other nongovernmental organizations, we developed a, I guess it was somewhat like a laundry list of recommendations that were offered at the final plenary session of the seminar. We urged the United States and other countries within the CSCE states to sign onto the international conventions that would safeguard the human rights of migrant workers.

And, I thought it would be important,
because I had never heard of these until I went there, and I’ve been working in farm worker programs since 1978, and I’m supposed to be, at a national level as an Executive Director of a national association, knowledgeable about these things to communicate it to farm worker organizations throughout the country. I’m acknowledging my ignorance.

But, this allowed or afforded an education for me that I can take back to the organizations throughout the country to make them aware of the situation.

The international conventions, and the conventions that are part of the ILO that I am speaking of include the International Convention on the Protection of the Rights of All Migrant Workers and members of the family, Convention on the Participation of Foreigners in Public Life at the Local Level, International Labor Organization Convention No. 97, Migration for Employment Convention, and, finally, the International Labor Organization Convention No. 143, Migrant Workers and the Supplementary Provisions.

We would recommend or urge the United States to sign, ratify and uphold all relevant international instruments that safeguard the human rights of migrant
workers and their families, and we also encourage the adoption or modification of appropriate legislation or regulations to implement such protections and programs.

We, additionally, have a whole laundry list of other issues and recommendations that we made. Clearly, as part of this, we also recommended that there be consideration in both the European nations, as part of the European Union, as well as in the United States, that allows for all legal residents within a country to have the opportunity to participate and have a voice in the political process. This would mean that the actions that have been taken in Maryland, and Maryland does do something right, and, particularly, to Takoma Park, would be replicated throughout the United States. This would afford individuals the opportunity to have a voice and to be able to have an input into their destiny.

And, I think with that equality in both labor standards, as well as in the political process, can help to improve the problems of migrant farm workers in the United States.

We do have copies of the statements and of the recommendations that are out on the outside desk.

Thank you.
Director Wise. Well, thank all three of you.

We do have some time now, if there are questions from the audience. I ask you to use that microphone, if you would please, and identify yourself when asking questions, and keep them as brief as possible, consistent with what you want to know.

Yes, in the back there.

Unidentified Audience Member. You may have said this before I came in, if so I apologize, what proportion of the migrant workers in any of the countries, the CSCE countries, are farm workers?

Ms. Echaveste. It was one of those interesting questions I think that both Mike and I spent time with some of the delegations trying to ascertain that, sort of what is the extent of the participation of migrant workers in the agricultural industry.

The best I could figure it out is, because the European countries focus on migrant workers, and those are jobs where you are temporary, a guest worker if you will, it is not seasonal, therefore, the jobs are mostly industrial, you really have to dig to get any information. And, what we learned was, there were a few countries, France for example, that had seasonal
workers coming from other countries for agriculture, but France did not participate very extensively.

There was also agriculture from Germany, in Germany, where we had Polish workers who worked in Germany, but there wasn't really very much that they could share with us about that industry.

Mike, do you have something?

Mr. Hancock. One of the striking things was how little they were willing to talk about, particularly, undocumented workers. Very few lawful migrants were working in agriculture, according to the delegations.

One of the phenomena that Maria alluded to, Poles coming over as tourists and spending a couple of months working in Germany in agriculture, was one of the phenomena. Another one, with a little prime, the delegate from the Netherlands acknowledged that in their greenhouse industry, when you are eating these beautiful red peppers during the off-season here, most of them are grown in Holland in greenhouses, and he estimated about 60,000 undocumented workers, almost all the employees in the greenhouse industry in Holland were undocumented workers.

It was funny, after -- and I think Maria said earlier, that we were sort of this incessant
voice saying, we've got to talk about undocumenteds, and there was a lot of resistance to do that, but once you got into it, one came to realize that the phenomena is not so different. Many of the same industries that we see the large presence of immigrant undocumented workers, agriculture, construction, demolition, the low-wage service industries, maids and domestics, are the same industries in Europe where undocumented workers gravitate to.

So, I don't know what percentage of migrants are working in agriculture. I think it was, again, the Dutch delegate that said, he estimated that in the European Union there's something on the order of 5 to 6 million undocumented workers, and with those industries that I listed being the preponderance. That was the estimate.

Unidentified Audience Member Not Speaking From Audience Microphone. Did you say 6 million undocumented workers?

Mr. Hancock. It was offered as an estimate, and without any certainty about how accurate that number was.

Unidentified Audience Member Not Speaking From Audience Microphone. What countries?

Mr. Hancock. Excuse me?
Unidentified Audience Member Not Speaking From Audience Microphone. What countries?

Mr. Hancock. He did not offer where they — their countries of origin. He did not have any good idea, although he thought they were from the traditional sort of sending countries, Turkey, Tunisia, Morocco, Algeria, those countries.

Director Wise. Yes, could you introduce yourself? It would help a little bit if you’d come to the microphone. We are also recording, so we are going to have a transcript later. Thank you.

Unidentified Audience Member. My first question is that, whether the American Commission established that by the term immigrant worker you mean only undocumented, or they can be documented as well?

Ms. Echaveste. I think we got the understanding that there were legal definitions, and I think what they were trying to convey was that the sense of the seminar was on the traditional European definition of legal migrant worker, but what the U.S. Delegation did was expand the topic that we were discussing to include those who were illegal, because we felt that the issues were so intertwined.

Unidentified Audience Member. You see, the question arises here that if you want to make one
legal definition for the term immigrant worker, and they are to include all documented and undocumented, you face a profound problem which you cannot resolve at the end yourself, because simply, as you know very well, that the European Union, for instance, those 12 countries, and now the 18 countries which form the European economic area, they have the right to move. As you know, it's one of the four freedom of movement for freedom of movements in the whole area. So, all these 18 countries, the people can move and work temporarily as much as they want. They keep all their rights. They keep -- they take their social rights, pension and et cetera, et cetera, and they are migrant workers, I mean, in any definition, and then they go back.

So, if you want to say undocumented workers are the same as these, how did you explain that, you can't do that. That's one thing.

And second, is that when you talk about the payment to these so-called "undocumented" workers, which I understand they exist, no doubt about it, then you have to study this issue country by country.

Let's take Sweden, for instance, Sweden doesn't have any minimum wage, it is the agreement between the union, in general terms, with the
Association of Employers, okay, and nobody is paying less to anybody except what you call "black employment." What they mean by black, it's not the color, it's just that means you don't pay taxes.

So, they do not pay to these individual workers less than they pay the documented workers, except that they don't pay the social fees.

So, by avoiding social fees, they don't pay taxes, the workers don't pay taxes, so whatever they get they collect.

If they were documented, they would get the same money, or a little more, but they have to pay so much taxes and the employers have to pay so much taxes.

You see, when one studies these issues, one has to put all these things together, and then you accomplish a conclusion.

So, did you, during your stay in Warsaw, did you come to this point to study the question of hiring black, what you call workers undocumented, for instance, or did it occur to you that such categories exist?:

Director Wise. Thank you very much. That's all the questions right now.

Ms. Echaveste. I think that, let me make a
couple of responses, I think that the U.S. Delegation’s insistence on talking about undocumented workers was to get to this point of what you are calling the sort of "black employment," because that is where the abuses take place for at least all immigrants in the United States.

Second, the question of, I don’t think there’s a suggestion, at least I’m not suggesting, that there be equivalent sort of legal workers, illegal, what I want to say is that what I’m coming away with is that there needed to be some basic set of working conditions, that whether you were there legally or illegally, there was some common international set of basic conditions that any worker would be entitled to. That’s what I came away with.

And, I understand that, obviously, there are differences between, every country has the right to make decisions about who, and what, and how people come to work, but that at least I feel that there is some humane reason, I guess, or a desire for some basic set of universal working conditions that one can say, I may not be here legally, but I’m certainly not -- I certainly ought not to be treated in the following ways.

So, does anybody else have any other
response?

Ms. Mull. I would like to agree with Maria on that. I think that, and I hope that it wasn't taken that any of my comments would say, we strongly feel that undocumented workers' rights should be protected, that they should not be exploited. That should not hold back applying equal labor standard protections across the board.

But, I did want to clarify one thing. In my discussions with the nongovernmental organizations, all agricultural workers in Europe, whom they call seasonal workers, are not undocumented. There are a large number of documented workers in Europe who are agricultural, and they are migrants, and they do migrate from one country to another, according to the nongovernmental organizations I was in contact with.

Additionally, understand that in European countries, the way that they do production in agriculture can be different. For example, a grocery store may own their own fields and hire local workers to work those fields. Those are agricultural workers, but they may be citizens of that country.

And so, there are some similarities amongst agricultural workers, and I just wanted to make sure that I clarified.

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Mr. Hancock. If I could address, and I think that there's another way to view this labor standards question, it's not -- the humanitarian concerns are paramount and are reason enough, but there's another reason why I think the black market has to be addressed. You cannot allow employers to take advantage of undermining and allow them to undermine the whole labor market by taking advantage of vulnerable, exploitable, undocumented workers, that if you allow them to play at the margins, whether it's not paying their taxes, or not paying minimum wage, or not providing the social benefits that other employers have to provide, you are at the risk of undermining the entire labor market. And so, it's not simply humanitarian concerns that lead, at least, me to believe that you have to enforce a minimum set of labor standards, regardless of the immigration status of the worker.

And, I think that's -- another reason is to protect the labor market.

Director Wise. The gentleman in the back.

Mr. Harrison. Hi, I'm Mark Harrison with the United Methodist Church Board of Church and society, how are you doing this afternoon?

Mike, you mentioned a report that the staff
did from the Commission, is that on the table outside?
I didn’t see it.

Mr. Hancock. Yes, there were volumes out there. It’s a thick, it’s a compilation of their hearings, of their investigations, it’s out on the table out front.

Ms. Mull. And, if they are not out there, we have about 50 or 60 in our office. We’d be glad to share those.

Mr. Harrison. My main question is, what happens next? Mike and Linda, what do you hope to -- where do you want to carry this now? And, Maria, do you see -- what do you see from, let’s say the Labor Department, and if the State Department is here, what are we expecting from the State Department?

Mr. Hancock. If I can address the first part of that, Mark. I think serendipitously the Administration has given us an opening to further argue for the sort of minimum set of labor standards, international conventions, that I think are an important new tool.

When Clinton announced this intention to look at a set of international labor standards in the trade context, I think that’s an opportunity for everybody who is concerned about the conditions of
farm workers to use that as a platform and a vehicle
to argue that, in fact, we have fallen short in
agriculture to the goals that we hope to hold others
to.

And so, I think we do have an opportunity,
and I think that we all should work to take advantage
of that.

Ms. Mull. We, as far as the Association,
have been working on trying to get a movement forward
on equalizing labor standard protections probably for
the last three or four years with agricultural
workers.

We are trying to form a coalition of farm
worker organizations and people who are supportive of
the needs of farm workers within the United States to
help us in that effort. And, I think as part of that
would be undertaking the amendments to the Fair Labor
Standards Act that are being discussed to take place
next year, during the next congressional session.

Additionally, as Mike has indicated, to move
on determining and getting a clarification as to why
the United States has withheld from signing, and
ratifying and enforcing, or, I guess, implementing the
international conventions. And, we would call upon
all nongovernmental organizations, and even
governmental organizations, who, you know, would like to see an equalization of labor standard protections, an increase in the equality of the rights of migrant workers and seasonal farm workers here in the United States, to join us in that effort.

Ms. Echaveste. I think, Mark, what happens next, as I said that the challenge was, we’d started the education process, the individuals who participated in the Delegation, I feel, are, having been advocates before, continue to see this as opportunities for furthering the goals and progress or improvements, vis-à-vis workers, and farm workers in particular.

As for the Labor Department, as it turns out, the Bureau of International Labor Affairs is having a one-day seminar next week on international labor standards, which was sort of a surprise, but we consider to be a very useful, I’m not quite sure where the end goal, you know, the end-goal, it could be in preparation for the ILO Congress in June or whenever it is, but still, that’s another opportunity.

I don’t know, the public is invited, but I think there’s a limit of something like 270, and for information on that, that would be the Bureau of International Affairs within the Department of Labor.
But, as for what happens next, I think that I don’t want to spend this whole time telling you Wage and Hour is doing, because we have a lot to do, but, just briefly, we have made a concerted effort within the Department of Labor to target to industries in which we think there is significant exploitation, or a high rate of violations. One is garment, and the other is agriculture. We are exploring ways to push the envelope, if you will, in our legal interpretations, to try to get as many responsible parties on the hook for violations of those laws that do apply, and I think that Linda’s chart, in terms of what laws apply to the industry, or to agricultural employees, was very useful.

I am of the view that, I keep saying to our staff or as issues come up, why do we keep treating agriculture differently than other industries, it’s a business just like everything else.

And, maybe if enough of us start thinking that way, we won’t so quickly be willing to carve out the exceptions for agriculture.

On the other hand, let’s make sure we understand quite clearly how strong the forces on the other side are. So, they are strong, but we are enforcing the law and there are strike forces in
various parts of the country that have developed plans. We are getting some attention from the industry, and I think that’s positive. It’s a question of, let’s see how far we can go with that.

Director Wise. Yes, here.

Ms. Rottenberg. Thanks. I’m Lori Rottenberg, and I work with Diane Mull at AFOP.

Maria, I had a question for you. You mentioned the possibility of a regional conference similar to the one that was held in Warsaw. I was interested if anything had been generated on that to this point, in terms of either what countries are envisioned to participate or how that might -- you know, what plans might be underway to do that.

Ms. Echaveste. I think that’s a question, really, for the Commission to explore avenues, but, certainly, those of us who participated were really intrigued with the idea.

It’s like any good idea, it sort of just takes a few people to sort of reach a critical mass to make it happen.

A very important question is, can it be under the auspices of the CSCE, when other countries that we’d be interested in participating with are not members. Should we work with OAS? Should we -- you
know, should we work in the context of NAFTA, if you think about. I mean, there are lots of opportunities, and I think that it's going to require some -- we are all intrigued with the idea, we just need to achieve, try to get some other interested parties.

Director Wise. Others?

This gives me a chance then to ask a couple questions that I had. In the meeting, was the discussion primarily in abstract terms about migrant labor problems, or were there specific countries mentioned, and specific minorities? In other words, how was the discussion cast?

Ms. Echaveste. Do you want to take this?

Mr. Hancock. I'll try, because the discussion was dominated by discussions of specific countries, specific populations, and there was some struggle involved in getting the conversation broadened so that some of our issues were debated.

The primary issue was the treatment of migrant workers largely of Turkish origin in Germany. And, it's a very important, and certainly current and critical issue, and so that the early part of the discussion was dominated by that.

It was interesting, however, as it went on, other issues arose, and one of the things that struck
me was, finding some of the former Soviet Union members, some of the Newly Independent States came forward and started talking about some of the concerns they have. And, it struck me how they the ticking time bomb, if you will, with the Newly Independent States with huge populations of people with no real prospects for meaningful employment in their homes.

And, while we haven’t seen to date, apparently, significant migration out, I think that you can see down the road five-six years, the sort of building demand in these countries, and I would be surprised if by the end of the century we don’t see significant movements, documented or not, of those people towards Western European countries with more vigorous economies.

That’s sort of how -- it started out as largely a Turk/German debate, but then evolved into these other regions.

Director Wise. Did you find that there was much interest in the U.S. experience?

Ms. Echaveste. Well, I think that what Mike was referring -- I mean, it took a while, I think that the emphasis was partly to do with two of the three moderators were interested specifically in the Turkish/German question, but we were able to, I think,
open up other issues.

I want to stress what Mike was talking about, it was very interesting to have the representative from Slovakia suggest that, you know, a possible program that he would be in favor of is sending workers from Slovakia to Sweden, or the Netherlands, where they wouldn’t have to pay the same wages that they’d have to pay their citizens, you know, reduced insurance benefits. And, those of us are sort of going, no, you really don’t want to do that, it’s going to lead -- so clearly, that’s a ticking time bomb.

But, there was eventually some receptivity to expanding the discussion beyond the Turkish/German question.

Director Wise. Let me ask just one more, and then I’ll see if there’s any other questions out there. Were there any examples mentioned or cited of a host country which handled the issue of migrant workers in a particularly positive way?

Ms. Echaveste. I think that the experience of the Netherlands are some interesting lessons, I would say. I think they are further down the road in sort of providing opportunities for political participation for their migrant worker population, of

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really attempting to address head on questions of how you deal with a multi-cultural society. And so, I mean, it was a pretty good model, at least an attempt to deal with these issues in a positive manner, rather than reacting in a negative of slamming the door kind of approach.

Sweden, too, I think, was attempting to deal with these issues of the culture.

Director Wise. Were they Turkish workers in both cases, or were they Indonesian?:

Ms. Echaveste. They were Indonesian, but some Turkish, yes.

Ms. Mull. There also were some educational programs that I went to some of the delegations from the other governments, when they would talk about educational programs, or training programs that they were offering.

Our neighbors in Canada had some innovative approaches that they were undertaking. Norway had done a very progressive effort in one of their educational programs to develop culturally sensitive materials for the migrant workers who came to their country.

And, there were, I think, a number of the other countries that you’ve mentioned, but there was
some unique programs that the governments had initiated, but the NGOs, the nongovernmental organizations, too, have on their own developed quite a bit, and that was discussed at some of our meetings, but not part of the plenary session, that they had some innovative activities that they were undertaking, and were trying to get support from the governments to help finance some of this to expand it.

We have quite a different situation in the United States. We have really government funded private organizations. You know, a lot of nongovernmental organizations receive federal funding from the U.S. government to help resolve the problems of special populations. That's not necessarily the case in a number of the other CSCE countries. There's not government funding that's provided to the nongovernmental organizations for them to undertake serving the needs, and that was one of the recommendations that came forward from the NGOs, is encouraging the governments to utilize the NGOs to be a response mechanism to serve the needs of special populations like migrant workers.

Director Wise. Okay.

Are there any further questions? Yes, would you, please go to the microphone? Thank you.
Ms. Bobotek. I’m Bea Bobotek from the Migrant Legal Action Program. And, Lori and Mark took the first questions I had about where do we go from here, but I do have one subject to ask about, and I don’t know if it came up. I doubt that it did, since you haven’t mentioned it, and that is the subject of child labor. Was child labor discussed at all in the context of international labor standards?

Ms. Mull. Not in the general plenary session, but as part of the NGOs, in asking about what are the labor standard protections that are afforded, child labor is covered under for migrant workers in Europe.

And, in my comments, there is a laundry list of the types of coverage that are offered within the European Union, equal pay, health and safety at work, unemployment compensation, minimum wage, overtime, worker’s compensation, protection for children as hired workers, the right to organize and collectively bargain, deferred pay and grievance, weekly rest, which is a new term for having your weekends off, or at least two days out of the week that you don’t have to work, dispute and settlement procedures, and holiday pay. Those are the labor standard protections that are afforded to hired workers, migrant workers in
Europe.

Director Wise. Well, do you have another question in the back?

Unidentified Audience Member Not Speaking From Audience Microphone. I have what I guess is a correction. When you say Europe, particularly Diane, when you say Europe you mean Western Europe, you don't mean Europe, am I correct?

Ms. Mull. I'm talking about the member states within the European Union, okay?

Mr. Hancock. Bea, this is at least in part responsive, I think. There wasn't a lot of discussion in the formal procedures about child labor or a whole range of other issues, although, the NGOs raised a host of other things, white slavery, for instance, which is, I guess, a growing problem in Western Europe with desperate people from the former Soviet Union and others finding that one of their only outlets. So, there was some frustration, I think rightfully so, that a lot of issues that the NGOs thought should be part of this discussion were sort of of off limits and never made it to the table. And, there was significant frustration expressed because of that.

So, this seminar really did sort of proceed down fairly well-confined lines and a lot of these
other issues just never got fully aired.

Director Wise. Any further questions?

Any final things our panel would like to say?

Ms. Echaveste. Other than, really, to express a real appreciation to the staff, both Mike and Jamie, and Christian, who came over from the State Department to help us, really made us at least appear to be somewhat knowledgeable and be able to engage in some very thoughtful discussions, so I really want to thank them.

Director Wise. Okay.

We want to thank you, all of you, for participating, and a final word, a transcript of this briefing, various seminar documents, and a Commission report on the seminar, will be published by the Commission in the near future.

So, if you want additional information on it, there will be some things coming out from us.

Thank you all for coming.

[Whereupon, the briefing was concluded at 3:12 p.m.]
CERTIFICATE

This is to certify that the foregoing transcript in the matter of: COMMISSION ON SECURITY AND COOPERATION IN EUROPE MIGRANT WORKERS SEMINAR OPEN SESSION

Before: SAM WISE, STAFF DIRECTOR OF THE HELSINKI COMMISSION

Date: APRIL 21, 1994

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represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

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