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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Measures to improve the situation and ensure the human rights and dignity of all migrant workers

Letter dated 25 May 1981 from the Chairman of the Open-Ended Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families to the Secretary-General

As you know, the Open-Ended Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families met at United Nations Headquarters from 11 to 22 May 1981 pursuant to General Assembly resolution 35/198, adopted on 15 December 1980.

During the 15 meetings which could be held between those dates, the Working Group had before it the following documents:

1. Report of the Chairman of the Working Group to the General Assembly at its thirty-sixth session (A/C.3/35/13) (circulated as a separate document);
2. Working paper submitted by the delegation of Algeria, Mexico, Pakistan, Turkey and Yugoslavia, subsequently joined by the delegations of Barbados and Egypt, containing a preliminary draft of a convention on the protection of the rights of all migrant workers and their families (A/C.3/35/WG.1/CRP.7) (see annex I);
3. Supplementary paper by the International Labour Organisation (A/C.3/35/WG.1/CRP.8) (see annex II);

* A/36/150.

4. Working paper submitted by the delegations of Finland, Greece, Italy, Portugal, Spain and Sweden (A/C.3/35/WG.1/CRP.9) (see annex III);
5. Working paper submitted by the delegation of Morocco (A/C.3/35/WG.1/CRP.10) (see annex IV);
6. Working paper submitted by the delegation of Algeria (A/C.3/35/WG.1/CRP.11) (see annex V);
7. Working paper submitted by the delegation of the Netherlands (A/C.3/35/WG.1/CRP.12) (see annex VI);
8. Working paper submitted by the delegation of Sweden (A/C.3/35/WG.1/CRP.13) (see annex VII);
9. Working paper submitted by the delegation of Canada (A/C.3/35/WG.1/CRP.14) (see annex VIII);
10. Working paper submitted by the delegations of Finland, Greece, Italy, Portugal, Spain and Sweden, subsequently joined by the delegation of Norway, containing proposals for the framework for the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (A/C.3/35/WG.1/CRP.15 and Corr.1 and 2) (see annexes IX to XI);
11. Draft report of the Working Group (A/C.3/35/WG.1/CRP.16 and Add.1 and 2) (see annexes XII to XV);
12. Working paper submitted by the delegation of Argentina (A/C.3/35/WG.1/CRP.17) (see annex XVI);
13. Working paper submitted by the delegation of Argentina (A/C.3/35/WG.1/CRP.18) (see annex XVII);
14. Working paper submitted by the delegation of Jordan (A/C.3/35/WG.1/CRP.19) (see annex XVIII);
15. Working paper submitted by the delegation of the Netherlands (A/C.3/35/WG.1/CRP.20) (see annex XIX).

As you will see, document A/C.3/35/WG.1/CRP.16 and Add.1 and 2 contains a draft report of the Working Group on its work at this intersessional meeting, which I submitted to the Group in my capacity as Chairman. The Group was unable to adopt the draft report owing to lack of time.

Nevertheless, with a view to meeting the wish of the General Assembly, as expressed in resolution 35/198, paragraph 6, to ensure effective preparation of the work of the thirty-sixth session of the General Assembly on this subject, I am transmitting to you herewith the above-mentioned documentation in order that you may communicate it to Governments, to the competent organs of the United Nations system and to the interested international organizations. This will enable

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Governments and Member States to study the documents sufficiently in advance of the next session of the General Assembly, when the Working Group will continue, in accordance with resolution 35/198, paragraph 7, its work on the elaboration of an international convention on the protection of the rights of all migrant workers and their families.

I would request you to circulate this letter and the above-mentioned documentation as a document of the General Assembly, under item 12 of the preliminary list.

(Signed) Antonio González de LEÓN
Chairman of the Working Group

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ANNEX I*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegations of Algeria, Mexico,
Pakistan, Turkey and Yugoslavia

PRELIMINARY DRAFT OF AN INTERNATIONAL CONVENTION ON THE
PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND THEIR
FAMILIES

As a continuation of the work of the Working Group responsible for elaborating an international convention on the protection of the rights of all migrant workers and their families, established by resolution 34/172 of 17 December 1979, and with a view to facilitating that work at the intersessional meeting of the Group convened by resolution 35/198 of 15 December 1980, the delegations mentioned above are submitting to the Working Group the following preliminary draft of preambular clauses and substantive provisions for the convention which in accordance with its mandate the Working Group is to submit to the General Assembly.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.7.

PREAMBLE

The States Parties to this Convention,

- (1) Reaffirming the permanent validity of the principles and standards embodied in the basic instruments and documents of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination,
- (2) Reaffirming also the principles and standards contained in conventions elaborated within the framework of the International Labour Organisation, especially those concerning the Recruitment, Placing and Conditions of Labour of Migrants for Employment (No. 66); Migration for Employment (No. 97); Basic Aims and Standards of Social Policy (No. 117) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143),
- (3) Reaffirming further the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,
- (4) Recalling the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the Code of Conduct for Law Enforcement Officials,
- (5) Recognizing the importance of the work carried out in connexion with migrant labour in various organs of the United Nations system, in particular in the Commission on Human Rights, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, and in various regional organizations,
- (6) Convinced that flows of migrant workers, which already involve millions of people, will continue to expand in the future as a reflection of the increasing interdependence among the members of the international community,
- (7) Aware of the positive impact that flows of migrant workers have on the process of regional integration and of the important role that such flows may play in the organization of a new international economic order,
- (8) Considering that international flows of migrant workers originate in differences in degree of development and level of income between States of origin and States of destination, and that such flows are a reflection and part of the supply of and demand for labour at the international level,
- (9) Bearing in mind the beneficial effects that labour mobility on an international scale has had and will continue to have on the economy of both States of origin and States of destination;

- (10) Realizing that the present and foreseeable dimension and characteristics of flows of migrant workers in many parts of the world warrant the establishment of conditions and legal bases for the appropriate protection of the fundamental human rights of all migrant workers and their families,
- (11) Taking into account the fact that flows of migrant workers have a positive effect, and sometimes a negative one, on the families of such workers, and that such effects justify the provision of appropriate international protection for those families,
- (12) Having observed that the status and rights of aliens have not been established clearly everywhere and that, among those rights, the fundamental rights of migrant workers have not been duly protected,
- (13) Considering, therefore, that the fundamental human rights and labour rights of all migrant workers and their families, including the rights of undocumented workers, who are even more defenceless because of their irregular status, require appropriate protection at the international level,
- (14) Convinced, therefore, of the urgent need to establish a universally applicable juridical framework containing the basic standards that must be applied to preserve the integrity of the fundamental human rights and labour rights of migrant workers and the basic rights of their families,

Have agreed on the following articles:

Definitions

1. For the purposes of this Convention, the term "migrant worker" means any person who travels from his State of origin to another State for the purpose of seeking or performing a lawful and remunerated activity. His presence in the State of destination may be temporary or permanent and his transfer may be covered by an agreement between the Governments of the State of origin and the State of destination or may be effected independently.
2. For the purposes of this Convention, the concept of "family" includes spouse, parents and minor children and any person who in accordance with the relevant laws of the State of origin is placed under the legal guardianship of the worker.
3. For the purposes of this Convention, the term "frontier worker" means any person who, while not residing in the territory of a neighbouring State and maintaining his place of residence in the frontier area of his own State, performs in the neighbouring State a lawful and remunerated activity from which he derives all or a substantial part of his income.
4. For the purposes of this Convention:
 - (a) The term "recruitment" means the stage, prior to the departure of a worker from his State of origin, which begins when the worker establishes contact with the employer from the State of destination, directly or through an

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intermediary or contractor, and ends when the worker undertakes, through a written contract or orally, to render services in the State of destination;

(b) The term "introduction" means the process of admitting a migrant worker to the territory of the State of destination;

(c) The term "placing" means the moment when the migrant worker begins work in the State of destination, whether on the basis of previously agreed terms or on conditions agreed at that time;

(d) The term "return" means the process of departure of the migrant worker from the State of destination to his State of origin;

(e) The term "State of origin" means the State of which a migrant worker is a national;

(f) The term "State of destination" means the State in which a migrant worker performs lawful and remunerated work.

5. States of destination shall accord migrant workers and their families full equality before the law with their own citizens, and in particular the right to equitable and satisfactory conditions of work, equal pay for equal work and equitable and satisfactory remuneration; the right to repatriate their earnings and savings during their sojourn in the country of destination or on their departure; and the right to receive in their country of origin any pension or compensation to which the worker may have been entitled in the country of destination.

6. States of destination shall accord migrant workers the right to public health, medical care, social security and other social services, and to education and vocational training, provided that they pay contributions or premiums established by law and that they meet the minimum requirements for their participation in the relevant national or local systems.

7. States of destination undertake to respect and ensure respect for the cultural identity of all migrant workers and their families. Migrant workers and their families shall in turn be required to respect the laws and the usages and customs of the State of destination.

8. The rights set forth in this Convention shall at all times be accorded both by States of origin and by States of destination to all migrant workers and their families, without distinction of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, property, birth or other status.

9. The provisions of this Convention shall apply to all migrant workers and their families, whether they are in the State of destination on a temporary or permanent basis, whether they travelled alone or in groups, whether they were hired privately or under governmental control, and irrespective of their degree of qualification for work.

10. The provisions of this Convention shall be valid in all applicable respects for workers of one State who perform their services in another State on account of employers of a third State.

11. Where workers of one State are hired by employers of another State to perform remunerated work in a third State, respect for the human rights of the worker shall be the responsibility of the State where such work is performed, but the labour rights deriving from the contract shall be the responsibility of the employer. The foregoing shall not dispense any of the three States, or the employer, from their obligation to ensure, each at their own level, the protection of such rights.

12. The State of origin and the State of destination undertake to establish the appropriate conditions and procedures for the effective protection of the fundamental rights of migrant workers and their families, inter alia by training law enforcement officials and officers in their respective territories, with respect to both the sojourn of workers in the State of destination and their return to the State of origin.

It is also advisable that the authorities of both States should establish reception and advisory services for the settlement of disputes, to deal with migrant workers on their arrival in the State of destination and on their return to the State of origin.

In this respect, it is particularly important that the authorities of both countries should disseminate all information which may contribute to the avoidance of problems and that they should endeavour to neutralize all misleading information.

13. Nothing in this Convention shall be interpreted as impairing the sovereign right of each State to determine the criteria which it deems most appropriate for the admission to its territory of foreign migratory workers and their families.

The foregoing does not imply that, where any foreign worker or his family has entered the territory of a State without the required migration documentation, such State may, on the ground of such irregularity, deny the full validity of the fundamental human rights of such persons or any labour rights they may have acquired as a result of a lawful activity performed in that State.

14. Migrant workers shall enjoy in the State of destination all the civil, economic, social and cultural rights provided for in national legislation and in the major applicable international instruments, subject only to such practical limitations as the duration of their sojourn in that State may impose.

15. The fundamental rights of all migrant workers and their families are unrenounceable and indivisible, in particular those concerning full recognition of their legal personality, physical integrity, inviolability of the home, preservation of the family, elementary civil rights such as freedom of thought, conscience and religion and freedom of assembly and association for lawful purposes, freedom of movement and residence and freedom to return to their country of origin.

16. All migrant workers and their families are entitled in the country of destination to the full enjoyment of the fundamental rights and freedoms set forth in the Universal Declaration of Human Rights, whether or not they are in possession of the required migration documentation.

17. The fundamental rights and freedoms referred to in article 16 above are, in particular, the right to life, the right not to be held in slavery or servitude, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation, and the right to fair process of law and to the use of all judicial and administrative remedies provided for by law.

In this respect, the State of destination has an obligation to permit the effective exercise of those rights and the State of origin has an obligation to defend them through the most appropriate procedures, including use of the consular channel, and to furnish the information and legal counsel required by migrant workers of its nationality.

18. Both States of origin and States of destination undertake to ensure, by means of such procedures as they consider most effective, respect for the fundamental rights of migrant workers throughout the stages of recruitment, introduction, placing and return; they shall ascertain that the services involved are provided free of cost.

19. States of destination undertake to adopt the necessary measures to prevent, within their jurisdiction, governmental authorities, private organizations or individuals from subjecting migrant workers or their families to any kind of threats, intimidation or psychological pressure.

The foregoing shall apply in particular in the case of employers and intermediaries or labour contractors, who shall be duly penalized whenever they impose abusive conditions or act in bad faith with respect to any migrant worker or his family.

States of origin shall also apply the appropriate sanctions when such improper acts are committed within their jurisdiction.

20. Respect for the fundamental human rights of migrant workers and their families shall be the responsibility of the national, state and local authorities and of employers and intermediaries, if any, from the time of their admission until their departure from the State of destination, whether or not such departure is voluntary.

21. Irrespective of his migratory status, every immigrant worker and his family shall receive the protection of the State of destination in respect of the civil rights set forth in the Universal Declaration of Human Rights and, in particular, shall enjoy on an equal footing with national workers the following rights:

(a) The right to security of person and to protection by the State against violence and physical injury inflicted by government officials or agents or by individuals, groups or institutions;

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(b) The right of equal access to and equal treatment by the courts and all organs administering justice, and the right to be assisted by an interpreter if he does not have a command of the local language;

(c) The right to adequate housing and to appropriate health and safety conditions at work;

(d) The right to seek the consular protection of his Government and to receive legal advice and counsel whenever the rights to which he is entitled under this Convention or under the national legislation of the State of destination are impaired.

22. No migrant worker or member of his family shall be arbitrarily deprived of property lawfully acquired in the State of destination; where, under the legislation in force, such property may be affected, he shall be entitled to fair compensation on an equal footing with nationals of that State.

23. Every migrant worker shall enjoy exemption from import duties in the State of destination in respect of the importation of his personal effects and work tools or equipment; the same exemption shall be granted in his State of origin on his return thereto. These exemptions shall also apply to the personal effects of his family.

24. States of destination reserve the right to permit or not to permit, to the extent provided for in their internal legislation, the participation of migrant workers in public activities or in administrative decision-making.

25. Migrant workers shall enjoy political rights in the State of destination only to the extent that that State, in exercise of its sovereignty, may grant them such rights.

26. States of destination shall allow the families of immigrant workers to join them:

(a) When the worker shows that he has security of employment for a minimum of ... ;

(b) When the worker acquires permanent residence;

(c) In such other cases as may be determined by the State of destination.

27. Upon joining the migrant worker, the family shall automatically be entitled to all social benefits deriving from the employment of the worker and shall have access to education and, in accordance with article 45, to employment.

28. In any case of application of sanctions, including pending proceedings for the expulsion or deportation of migrant workers or their families, the competent authorities of the State of destination shall pay special attention to the problems posed by the families of such workers, with particular reference to the specific needs of women and minor children.

29. With a view to lenient application of their legal provisions concerning migration, States of destination shall take into account the cases of workers who have regularly paid taxes or social security contributions, whether or not they are in possession of the required migration documentation.

30. The fundamental human rights and the labour rights of migrant workers or their families shall not, in the event of their being subjected to any form of detention or imprisonment provided for by the laws in force in the State of destination, be limited or impaired merely because such workers or their families lack the required migration documentation. This provision shall apply at all times, including during any expulsion or deportation proceedings.

31. In any case of detention or imprisonment of migrant workers or members of their families, the competent authorities shall not require the detainees or prisoners to perform any work, unless such work is duly remunerated.

32. During the period of his detention or imprisonment, any migrant worker or member of his family shall enjoy the right to visits by his family, his lawyers or the consular representatives of his country.

33. Any migrant worker or member of his family who is detained in the State of destination for infraction of the provisions concerning migration shall be housed in suitable accommodation separate from the prisons or other centres of detention or imprisonment for offenders or criminals.

34. All costs arising from the detention of migrant workers or their families shall be borne by the competent authorities of the State of destination.

35. The labour relationship between the worker and the employer shall be established ipso jure at the moment when the two parties agree, in writing or orally, on the performance of a given service in exchange for the corresponding remuneration and benefits.

36. The irregularity of a worker's migratory status shall in no way affect any rights which may have been acquired by the worker in the State of destination as a consequence of his labour relationship. The validity of the labour rights acquired shall prevail even after the departure of the worker, voluntarily or involuntarily, from the State of destination.

37. The authorities of the State of origin and of the State in which such rights were acquired shall take the necessary measures to ensure that the worker receives all remuneration and compensation to which he is entitled, before or after his return to his State of origin, and shall, where necessary, agree on procedures for the recovery of unclaimed funds which may have accumulated in the State of destination.

38. The labour authorities of the State of destination shall ensure that there are no misrepresentations in the terms of employment, both as regards remuneration for the work and with a view to preventing the assignment of the worker to duties other than those for which he was hired, unless the terms of the contract and the level of remuneration are duly adjusted.

39. No migrant worker shall be required, much less compelled by any kind of pressure, to perform duties other than those for which he was hired, and his refusal to do so shall at no time occasion the loss of his employment or, where applicable, the cancellation of his migration documentation.
40. No State shall recognize the validity of employment contracts or arrangements of any kind, individual or collective, the terms of which violate the fundamental rights of migrant workers. Any contract which implies a renunciation by the worker of any of the inalienable rights set forth in the Universal Declaration of Human Rights shall be invalid.
41. The authorities of the State of destination shall ensure that the wages of migrant workers are not subjected to any deductions or withholdings in excess of those established by law and shall supervise, in particular, that deductions for taxes and social security contributions actually reach their destination.
42. In cases of collective hiring under governmental control, the equity of labour conditions and the protection of the fundamental rights of migrant workers and their families shall be the responsibility of the Governments involved. In cases of individual hiring, such equity and such protection shall be the responsibility of the employers and of the intermediaries or contractors, if any, who are involved in the hiring.
43. Every migrant worker shall be entitled to resort, in the State of destination, to the protective procedures existing in accordance with labour law, including procedures for conciliation and arbitration, on an equal footing with national workers.
44. Migrant workers shall be entitled, in the State of destination, to organize themselves in unions for the defence of their labour rights and the improvement of their living and working conditions, or to join unions already in existence, on an equal footing with national workers.
45. When a migrant worker has remained for a minimum of ... years in the State of destination, members of his family shall be permitted to work independently; they shall be permitted to do so at an earlier date upon attaining their majority.
46. The fundamental human rights and the labour rights acquired by a migrant worker and his family under the national or local legislation in force in the State of destination or by virtue of existing international instruments shall not be invalidated or lapse by reason of any provision concerning migration.
47. Migrant workers and their families shall be expelled or deported only on the basis of a decision adopted by the State of destination in accordance with the laws in force; in such event they shall be entitled to submit a statement of the reasons why they should not be expelled or deported and to present their case for review by the competent authorities.
48. States undertake, whenever they deem it necessary to expel or deport migrant workers or their families, to comply strictly with the legal provisions in force

and to carry out the expulsions or deportations in a manner that does not impair the fundamental rights of the migrant workers and their families.

49. In any case of expulsion or deportation, the authorities of the State of destination shall bear the costs incurred and shall refrain from exerting pressure on the persons concerned in any manner in order to obtain their agreement to summary procedures such as "voluntary exit", when such agreement is not spontaneously forthcoming from the persons concerned.

50. States of destination undertake not to carry out at the homes or the places of work of migrant workers, or in public places, raids or razzias resulting in the sudden mass detention, imprisonment or deportation or expulsion of migrant workers or their families.

51. After the expiry of one year from their admission to the State of destination, migrant workers shall not lose their right of residence merely because of having lost their employment.

52. Each State reserves the right to establish the criteria for authorizing the activities of intermediaries or contractors for the recruitment, introduction into another country or return to their own country, and placing in employment of migrant workers, and to apply appropriate sanctions to persons who engage irregularly in such activities or participate in such procedures deceitfully or in bad faith.

53. The States Parties to this Convention undertake not to promote in any way the surreptitious or illegal migration of workers, and to prevent the dissemination of information which misrepresents in any way the facts concerning flows of migrant workers.

54. Nothing in this Convention shall be interpreted as limiting the sovereign powers of each State to regularize or legalize the sojourn in its territory of undocumented workers.

55. The provisions of this Convention shall apply to frontier workers, subject to the limitations deriving from the fact that they are not resident in the State in which they work. However, all the provisions relating to protection of fundamental human rights and of the labour rights acquired in the State in which they work shall apply to such workers.

56. Nothing in this Convention shall be interpreted as limiting the right of all the States Parties to conclude, bilaterally or multilaterally, agreements aimed at covering specific situations concerning the status of migrant workers and their families. However, no conditions or terms impairing the standards established in this Convention shall be included in such agreements.

57. If agreements concluded between Governments, or national legislation of States, establish, in matters covered by this Convention, conditions or treatment more favourable than those established in the Convention, the most favourable

conditions shall apply and the treatment most beneficial to migrant workers and their families shall be granted.

58. Where two or more States enter into arrangements relating to migration for work, they shall in no case establish conditions for migrant workers and their families which are less favourable than those provided for in the national legislation of the country or countries of destination. The benefits and conditions provided for shall in any case be equal to those established for national workers in the State of destination, irrespective of those granted in the State of origin.

59. States undertake to provide ... with basic information on the movement of migrant workers to and from their territory; they shall transmit up-to-date information on the legal provisions governing the employment of foreign workers and shall notify any arrangement concluded by them in this field with other States.

/Machinery for monitoring the application of the Convention/

FINAL CLAUSES

(1) This Convention shall be open for signature, ratification and accession by all States and shall be applicable, in all its terms, in all territories under the jurisdiction of States which become Parties thereto.

(2) The provisions of this Convention shall be applicable in all States Parties at both the national and the local levels. Each State Party therefore undertakes to adopt the necessary measures to facilitate such application, according to its particular structures and in accordance with the relevant internal procedures.

(3) This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, before whom the acts of signature, ratification or accession shall be done. The corresponding instruments shall also be deposited with the Secretary-General, who shall notify such acts to all States which have signed, ratified or acceded to this Convention.

(4) This Convention shall enter into force three months after the date of deposit of the ... instrument of ratification or accession.

(5) For each State ratifying this Convention or acceding to it after its entry into force as provided for in paragraph 4 above, the Convention shall enter into force three months after the date of deposit by such State of its instrument of ratification or accession.

(6) The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in paragraph 3.

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English

Annex I

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/Settlement of disputes concerning application and interpretation/

/Amendments/

/Denunciation/

ANNEX II*

**MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS**

Supplementary paper by the International
Labour Organisation

1. In connexion with the proposed elaboration by a Working Group of the General Assembly, of an international convention on the protection of all migrant workers and their families, the ILO prepared a paper outlining the possible contents of such a convention. That paper was circulated to the Working Group and reproduced in annex II to the report of the Chairman of the Working Group. 1/
2. The discussions of the Working Group during the thirty-fifth session of the General Assembly and the various working papers submitted to it have served to identify some of the main issues of principle which will determine the nature, scope and contents of the proposed convention. Resolution 35/198 on this question, adopted by the General Assembly on 15 December 1980 contemplates that, during the second stage of its activities, the Working Group would proceed to the preparation of a preliminary draft convention. The present paper seeks to clarify some of the questions raised in the ILO's earlier paper and arising out of the discussions at the thirty-fifth session of the General Assembly, with a view to facilitating the preparation of such a preliminary draft. It deals with the following matters:
 - (a) Definitions;
 - (b) Protection of persons in an irregular situation and other special categories of migrants;
 - (c) Approach to the substantive provisions of the convention;
 - (d) Needs specific to migrant workers and their families.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.8.

1/ See document A/C.3/35/13.

A. Definitions

3. It was recognized in the discussions of the Working Group that it would be necessary to frame definitions of concepts such as "migrant worker" and "family". Certain definitions of these concepts are to be found in ILO instruments (e.g. Convention No. 97, article 11, and Convention No. 143, articles 11 and 13). While these definitions may be useful by way of reference, they may not suffice for the purpose of the proposed United Nations convention, particularly as they exclude certain categories of workers whose inclusion in the new instrument, in whole or in part, the Working Group may wish to consider. The previous ILO paper, in paragraph 5, drew attention to various categories of migrant workers whose position might require special consideration in framing the substantive contents of the proposed convention, such as persons admitted for permanent settlement, persons who on account of length of residence have acquired an enhanced status, persons admitted for a fixed term, frontier workers, seamen, persons admitted for training and education, and workers admitted temporarily for execution of a specific assignment. The manner of treating such categories will also have to be borne in mind in drawing up definitions.

4. It may also be appropriate, if the provisions of the convention make a distinction between migrant workers and their families lawfully admitted to the country concerned and persons in an irregular situation (see below), to define the criteria for considering a person as lawfully admitted.

B. Protection of persons in an irregular situation and other special categories of migrants

5. The desire has been expressed in the earlier discussions not to confine the new convention to migrant workers and their families lawfully admitted to the country concerned, but also to deal with the protection to be given to migrants in an irregular situation. The previous ILO paper listed, in paragraph 7, a number of rights the granting of which to all migrant workers and their families, whether lawfully admitted or not, appeared to warrant consideration. The precise extent of the protection to be given to persons in an irregular situation will have to be determined by the Working Group. This question might be approached in two different ways. One might discuss as a distinct issue which rights should be granted to all persons, whether lawfully admitted or not. Alternatively, one might examine, in connexion with each substantive provision, to what extent it should apply to persons in an irregular position as well as to persons lawfully admitted.

6. The same two approaches might be adopted for the purpose of considering the application of the convention to other special categories of migrants, such as those mentioned in paragraph 5 of the previous ILO paper and in certain other working papers presented to the Working Group.

C. Approach to the substantive provisions of the convention

7. It appears from the earlier discussions that there is a wide measure of agreement that, in considering the protection to be granted to migrant workers and their families, account should be taken of existing human rights instruments, and in particular of the International Covenants on Human Rights. This raises a major issue as to the perspective from which the new convention should be framed. Should it require the guarantee to migrant workers and their families of a number of rights, drawn from earlier international instruments? Or should its aim be to secure equality of rights between nationals and migrant workers and their families in a number of fields defined by reference to the matters dealt with in such instruments? It may be of assistance to the Working Group to indicate some of the implications of following these different courses:

(a) A substantial number of countries, including countries having a direct interest in the protection of migrant workers and their families (either as countries of origin or as countries of employment of migrant workers), have not yet been able to ratify the Human Rights Covenants. If the new convention were to require the granting to migrant workers and their families of substantially similar rights to those already provided for in the Covenants, the effect might be that many countries could not contemplate the ratification of the new convention until they were in a position to ensure observance of the Covenants. This problem would be accentuated by the fact that the rights in question would be embodied in one instrument, whereas the Covenants deal separately with civil and political rights and with economic, social and cultural rights. It needs to be remembered moreover that, whereas the rights covered by the Covenant on Civil and Political Rights are expressed in terms of immediately enforceable rights, most of the rights recognized in the Covenant on Economic, Social and Cultural Rights are to be realized progressively in accordance with a country's available resources (art. 2, para. 1);

(b) It would also be desirable to consider the relationship between obligations arising under the Covenants and those arising out of the new convention. The Covenant on Civil and Political Rights requires a ratifying State to ensure the rights recognized in it "to all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1). It is only exceptionally, in the case of article 25 of the Covenant (relating to participation in public affairs, elections, and access to the public service), that the rights in question are restricted to citizens. Other rights are to be granted or recognized in favour of "all persons" or "everyone". The right of freedom of movement and choice of residence is to be granted to "everyone lawfully within the territory of a State" (art. 12, para. 1) and protection against arbitrary expulsion is to be accorded to "an alien lawfully in the territory of a State Party" (art. 13). It would thus appear that, in general, the protection of this Covenant should be extended to all individuals within the territory and subject to the jurisdiction, of a State Party, including aliens. The rights provided for in the Covenant on Economic, Social and Cultural Rights are also expressed as to be recognized or ensured for "everyone". However, under article 2, paragraph 3, "developing countries, with due regard to human rights and their national economy, may determine to what extent they would

guarantee the economic rights recognized in the present Covenant to non-nationals". It is to be noted that this possibility of restricting the application of the Covenant is permitted only to developing countries and applies only to economic rights (as distinct from social and cultural rights). Otherwise the protection of this Covenant would extend to foreigners within the territory and jurisdiction of a State Party. In the light of these considerations, it would appear important to take care in the framing of the new convention not to impair guarantees which are already accorded to migrant workers and their families under the Covenants;

(c) The alternative approach would be to aim at equality of rights between nationals and migrant workers and their families in defined areas, but without seeking to impose a prescribed level of protection. As indicated in the previous ILO paper, complete equality in all areas of civil, political, economic, social and cultural rights may not be attainable, and it would be necessary to consider to what extent, and in respect of which categories of migrant workers and their families, qualifications of the principle of equality of rights might have to be permitted.

D. Needs specific to migrant workers and their families

8. The previous ILO paper pointed out a number of areas in which special problems arose for migrants which called for positive measures to safeguard their welfare or to enable them effectively to exercise certain rights. Such questions arise, for instance, in respect of residence rights, protection against arbitrary expulsion or deportation, measures related to family reunification and welfare, special measures in connexion with education and the preservation of cultural identity, and special measures in the field of health protection. Whichever approach were adopted to the core of the convention (enunciation of substantive rights or provisions aimed at equality of rights), such special needs arising from the position of migrant workers and their families would merit consideration with a view to inclusion of appropriate provisions. It would however be necessary to consider carefully any protection already available under other international instruments in order not to impair existing guarantees.

ANNEX III*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegations of Finland, Greece,
Italy, Portugal, Spain and Sweden

Preamble

Delete 6 to 13 and add:

- (6) "Recognising the progress made by certain countries on a regional or bilateral basis, as well as the importance and usefulness of multilateral and bilateral agreements for the protection of the rights of migrant workers,"
- (7) "Considering the situation of vulnerability in which migrant workers find themselves in the receiving societies for objective reasons relating, among other things, to their absence from their country of departure and to the difficulties of their insertion in the receiving society,"
- (8) "Bearing in mind on one hand the contribution of migrant workers to the economy of the receiving countries and on the other hand the social costs connected with the migratory process,"
- (9) "Recognizing the necessity to promote a balanced international economic development in order to minimize the need for and problems linked with international migration,"
- (10) "Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of countries in the international community,"
- (11) "Taking into account that often migration is the cause of serious problems for the families of migrant workers themselves,"
- (12) "Convinced that the status and rights of migrant workers and their families require appropriate international protection,"

* Previously issued under the symbol A/C.3/35/WG.1/CRP.9.

- (13) "Bearing in mind that the human problems involved in migration are even deeper in the case of illegal migration and that therefore appropriate action should be reinforced also at the international level in order to prevent and suppress illegal and clandestine movements and traffic of migrant workers, while at the same time assuring the protection of their fundamental human rights,"
- (14) Delete /and labour rights/

ANNEX IV*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of Morocco

Preamble

Paragraph (14)

Convinced of the need to enlarge the scope of the international instruments already drafted to protect migrant workers, by creating a new legal framework capable of universal application and containing the basic rules to be respected in order fully to preserve the fundamental rights of migrant workers and of their families,

* Previously issued under the symbol A/C.3/35/WG.1/CRP.10.

ANNEX V*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of Algeria

Preambular paragraph 11

Convinced that, despite the existence of the above-mentioned international instruments, it is necessary to ensure a more universal (or more broad) protection of the rights of all migrant workers and of their families,

* Previously issued under the symbol A/C.3/35/WG.1/CRP.11.

ANNEX VI*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of the Netherlands

Preambular paragraph (5 bis)

"Welcoming conventions and regulations agreed upon within regional organizations on the protection of migrant workers, such as the European Convention on the Legal Status of Migrant Workers (1977),"

* Previously issued under the symbol A/C.3/35/WG.1/CRP.12.

ANNEX VII*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of Sweden

Draft definition

For the purposes of this Convention, the term "migrant worker" means any person who has been authorised by a State, other than that of which he is a citizen,

(a) to take up paid employment;

(b) to exercise independent economic activity; or

(c) to undertake specific duties or assignments in the territory of the authorising State,

as well as any person who, without having been authorised thereto, has been employed in the territory of a State, other than that of which he is a citizen.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.13.

ANNEX VIII*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of Canada

1. For the purposes of this Convention the expressions:
 - (a) migrant worker: means a person who is engaged in employment in a jurisdiction of which he is not a national;
 - (b) permanent migrant worker: means a migrant worker who is authorized by the jurisdiction in which he is engaged in employment to engage in that employment for an undeterminate period of time;
 - (c) temporary migrant worker: means a migrant worker who is authorized by the jurisdiction in which he is engaged in employment to engage in that employment for a determinate period of time;
 - (d) unauthorized migrant worker: means a migrant worker who is not authorized by the jurisdiction in which he is engaged in employment to engage in that employment;
 - (e) engage in employment: means in relation with a migrant worker, to be employed by an employer as an employee.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.14.

ANNEX IX*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE
HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

PROPOSALS FOR THE FRAMEWORK FOR THE CONVENTION ON THE PROTECTION
OF RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

This paper is intended to provide a first outline of the possible framework for the Convention. In order to facilitate the discussion, reference is made, whenever possible, to the paragraphs of the proposed text of Convention contained in CRP.7; such reference does not imply at this stage any acceptance of the content or wording of such paragraphs, but is provided simply as an indication of the possible consideration of the subject matter of those paragraphs, or part thereof, in the framework of Convention suggested here.

Preamble

- Para. 1 to 5 of CRP.7 (revised according to the discussions in the WG);
- Para. 6 to 13: substituted by the proposals contained in CRP.9;
- Para. 14 of CRP.7, with deletion of the words "and labour rights".

Additional paragraphs may be added e.g. on the preservation of the cultural identity.

Section I - Definitions

Art. 1 - Definition of migrant worker (on the basis of the Swedish proposal)

para. 1 - migrant workers (documented) authorized:

- (a) to take up paid employment
- (b) to exercise independent activities
- (c) to undertake specific duties or assignments

para. 2 - unauthorized (undocumented) migrant workers

(the interrelations between the terms "documented/undocumented" and "authorized/unauthorized" migrant workers deserve a deeper study: this question is left aside at this stage).

* Previously issued under the symbol A/C.3/35/WG.1/CRP.15.

Art. 2 - Definition of members of the family, on the basis of ILO Convention 143, art. 13/2: "For the purposes of this Convention the term 'family' means the spouse and dependent children, father and mother".

Art. 3 - Definition of migration process (departure, travel, stay and work, return)

Other definitions may be added if they will be deemed necessary in a further stage of elaboration of the Convention, e.g. that of "country of origin" and "receiving country".

Section II - Fundamental human rights of all migrant workers and their families
(as defined in art. 1, para. 1 and 2 of the definitions)

This section should be related to the fundamental human rights as defined in the United Nations instruments in this matter.

1. Non-discrimination clause (race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, property, birth or other status).
(CRP.7: para. 8, 9)
2. Right to leave the country of origin, to leave the receiving country, to be accepted back in their own country.
3. Protection of life and person: right to life; protection against slavery, torture, inhuman and degrading treatment.
(CRP.7: para. 12/1, 16, 17, 21/a)
4. Fundamental freedoms of thought, opinion, expression, religion, cult.
(CRP.7: para. 16-17)
5. Protection of personal properties, inviolability of domicile and correspondence.
(CRP.7: para. 22)
6. Guarantees in case of arrest or detention in the course of administrative, civil and criminal proceedings, and in relation to measures of expulsion or deportation.
(CRP.7: para. 21 (b), 28, 29, 30, 31, 32, 33, 34, 47, 48, 49, 50)

It is felt by the submitting delegations that this subsection should provide a basic protection, so to keep duly into account on the one hand the fundamental rights of all migrant workers as human beings and on the other hand the sovereign

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right of all countries to regulate entry in their territory and access to work by foreigners. (Additional legal guarantees could be provided for in Section III of the Convention for migrant workers who are or may fall, to some extent only, in an irregular position).

7. Right to protection by consular and diplomatic authorities.

(CRP.7: para. 21 (d))

8. Rights arising out of work: participating States should undertake to implement the principles set forth in this respect by the ILO.

(CRP.7: para. 13/2, 36, 37;
special consideration
deserves para. 40)

9. Right to adequate information, in their own language, on their rights, on the conditions of life, work, housing, travel, during all the phases of the migration process - such information should be provided for in collaboration between countries of origin and receiving countries.

10. Clause concerning the unrenounceable and indivisible character of the migrant workers' rights.

(CRP.7: para. 15)

Section III - Basic rights of authorized (documented) migrant workers (as defined in art. 1, para. 1, of the definitions)

(CRP.7: para. 14)

This section should contain basic principles in the political and civic, economic and social as well as cultural sphere. Whenever appropriate, the provision of the Convention should engage participating States to implement the principles set forth by the ILO, UNESCO or other competent United Nations specialized agencies.

The following list is merely indicative of the matters which may be covered.

1. Migratory status

This matter is largely to be left to the sovereign determination of each State. However, the Convention may set forth some general standards, such as the principle that admission and residence in the receiving country should not be subject to such conditions which would limit the rights and guarantees provided for in this convention. (Such provisions should also be related to the clause in Section IV.2 which recommends the conclusion of agreements at the regional as well as the bilateral level, with the aim of clarifying and improving the status of migrant workers.)

2. Political and civil rights

- association and reunion
- measures to facilitate exercise of voting rights in their own countries
- measures to facilitate participation in decisions concerning local community life, including information, consultation and other forms of active participation in local administration.

(CRP.7: para. 24, 25)

3. Protection of family rights

- family reunion (CRP.7: para. 26, 27, 45)
- measures to ease the problems which arise when families remain in another country.

4. Equality of opportunity and treatment with nationals of the receiving country in respect of:

- (a) right to appropriate housing and access to social housing schemes;
- (b) access to social services (the receiving States should take appropriate action to enable migrant workers to use such services including the establishment of interpreting and advisory services when needed);

(CRP.7, para. 6)

- (c) access to health services;
- (d) access to educational services and institutions, including vocational and professional training and teaching of the local language;
- (e) freedom of movement in the receiving country, within the limits of national security;
- (f) right to join unions and to exercise labour-union rights (CRP.7, 44);
- (g) social security (CRP.7, para. 5)

(the final text of this provision should be drafted in consideration of the standards already adopted or in the process of adoption in the ILO; according to these standards, States should undertake to conclude multilateral or bilateral agreements covering, in particular, the preservation of social security rights when workers move from one country to another)

5. Specific cultural, social and economic rights such as:

- (a) preservation of cultural identity, including promotion of instruction

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of and in their own language in co-operation with their own country, especially for the second generation of migrants;

- (b) right to transfer earnings and savings (CRP.7, para. 5);
 - (c) avoidance of double taxation and of double social security charges.
6. Right not to be considered in an irregular situation by the mere fact of the loss of employment and guarantees in case of procedures of expulsion or in the case of legal proceedings concerning their migration status.

Section IV - Special categories of authorized/documented migrant workers

This section should contain only basic principles whose application is peculiar to some categories of migrant workers, and should refer, whenever possible, to the competence of the United Nations specialized agencies, such as ILO. Additional clauses may be added in a later stage, if deemed necessary, for other categories of migrant workers.

1. Migrant workers (documented) - authorized to take up paid employment (as defined in article 1, para. 1 a)
 - (a) free choice of employment after a certain period of time.
 - (b) equality of treatment with nationals concerning labour rights, including pay and conditions of work, security of employment, provision of alternative employment, relief work and retraining. (CRP.7, 5-58)
 - (c) access to unemployment benefits (see explanatory note in Sect. III.4, g)
2. Migrant workers (documented) authorized to exercise independent activities (as defined in article 1, para. 1 b)
 - (a) Obligation of the receiving countries to clearly define the conditions for engaging in independent activities by foreigners (including professional and technical qualifications) and to list the occupations exclusively reserved for nationals or whose exercise by foreigners is subject to reciprocity.
 - (b) Access to bodies of economic or professional nature.
3. Migrant workers (documented) authorized to undertake specific duties or assignments (as defined in article 1, para. 1 c)
 - (a) Principle that the duration of their stay should be guaranteed for all the duration necessary for the execution of their specific duties or assignments.
 - (b) Co-operation between the countries concerned in order to facilitate the installation by the enterprises, for which these migrant workers operate,

of additional facilities such as houses, schools, medical and recreational services (at no cost for the receiving countries unless so provided in specific agreements).

- (c) Freedom to have their salaries paid in the countries of origin.
- (d) Right to be accompanied by members of their family, during the duration of their assignment (whenever possible, taking into account safety or other considerations).
- (e) Guarantee of no restriction of the personal liberty of the workers or of members of their families and of their freedom to leave the receiving country in connexion with contractual or administrative liabilities eventually incurred by the foreign company in the receiving State.

Section V - Promotion of sound and equitable conditions for international migrations

1. Sovereignty clause: right of each State to determine the criteria for the admission and residence of migrant workers and their families and their authorization to work (this provision should however be related to the principle suggested in Sect. III, 1) and, as a matter of consequence, right to expel illegal/undocumented migrant workers and obligation of the country of origin to accept them back (this provision should be related to the workers rights and procedural guarantees in Section II, and to the engagement of co-operation suggested later in this Section, n. 5)

(CRP.7, para. 13)

2. Obligation of both countries of origin and of destination to appoint competent authorities to deal with status, departure, travel, arrival, exit and return of migrant workers and their families (including appropriate consular services)

(CRP.7, para. 12/2, 42)

3. Co-operation between countries of origin to prevent and suppress illegal and clandestine movements and traffic of (undocumented) migrant workers and their families (reference should be made to the implementation of the principles of ILO Conventions):

- (a) prevention and suppression of false information (see also Section II, 10) and obligation to condemn and discourage illegal or clandestine movements of migrant workers

(CRP.7, para. 53)

- (b) sanctions against persons engaged in illegal or clandestine traffic or movements of unauthorized/undocumented migrant workers

(CRP.7, para. 52)

- (c) prevention and repression of clandestine employment and of threats and intimidation by employers or labour contractors.

(CRP.7, para. 19, 38, 39,
40, 41, 43)

4. Reinforcement of measures aimed at ensuring that migrations take place only through the official channels (as indicated above in this Section n. 2)
5. Co-operation between countries of origin and countries of destination in order to solve the problems of existing illegal/undocumented migrant workers, either by regularizing their sojourn and working conditions in the country of destination

(CRP.7, para. 54)

or by organizing their return to the country of origin.

6. Co-operation between countries of origin and countries of destination in order to preserve the possibility and solve the problems linked with voluntary return of authorized/documented migrant workers and their families (including measures to facilitate repatriation of personal belongings and work tools; CRP.7, para. 23)

Section VI - Final clauses

1. Saving clause for restrictions which are strictly necessary in the interest of public order, public security and public health
2. Saving clause for regional organizations as well as for multilateral and bilateral agreements (CRP.7, para. 57) and recommendation to the countries concerned to conclude regional or bilateral agreements aimed at better taking into account special local situations in the interest of migrant workers and to improve their status (CRP.7, para. 56)
3. Implementation of the Convention. It is felt by the submitting delegation that the character of this Convention (providing a framework of general principles aimed at a better implementation of existing international standards as well as at the adoption of more detailed rules by United Nations specialized agencies or through regional or bilateral agreements) should warrant the establishment of an adequate implementation machinery in order to collect information, review the progress made and formulate observations.

(CRP.7, para. 59)

ANNEX X

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

PROPOSALS FOR THE FRAMEWORK FOR THE CONVENTION ON THE PROTECTION
OF RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

Corrigendum

Document A/C.3/35/WG.1/CRP.15 was submitted by the following delegations:

Finland, Greece, Italy, Portugal, Spain and Sweden.

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ANNEX XI*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN
RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

PROPOSALS FOR THE FRAMEWORK FOR THE CONVENTION ON THE PROTECTION
OF RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

Working paper submitted by the delegations of Finland,
Greece, Italy, Portugal, Spain and Sweden

Corrigendum

Page 6, Section V, paragraph 3

The first sentence of paragraph 3 should read

3. Co-operation between countries of origin and of destination to prevent and suppress illegal and clandestine movements and traffic of (undocumented) migrant workers and their families (reference should be made to the implementation of the principles of ILO Conventions):

* Previously issued under the symbol A/C.3/35/WG.1/CRP.15/Corr.2.

ANNEX XII*

**MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS**

**DRAFT REPORT OF THE OPEN-ENDED WORKING GROUP ON THE DRAFTING OF AN
INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL
MIGRANT WORKERS AND THEIR FAMILIES**

(Intersessional meeting - 11-22 May 1981)

Chairman: Mr. Antonio Gonzalez de Leon (Mexico)

INTRODUCTION

1. The General Assembly in its resolution 35/198 of 15 December 1980 decided that the open-ended Working Group, established under General Assembly resolution 34/172 to elaborate an international convention on the protection of the rights of all migrant workers, should hold an intersessional meeting of two weeks' duration in New York in May 1981, immediately after the first regular session of the Economic and Social Council, to enable it to continue its work in order to discharge its mandate to the best of its ability during the thirty-sixth session of the General Assembly.
2. The Economic and Social Council at its first regular session of 1981 welcomed the fact that the Working Group had begun its work during the thirty-fifth session of the General Assembly and expressed the hope that substantial progress would be made by the Working Group during the intersessional meeting scheduled for May 1981, pursuant to General Assembly resolution 35/198 of 15 December 1980, in order that the Working Group may best carry out its mandate and complete the elaboration of the Convention during the thirty-sixth session of the General Assembly.
3. In pursuance of General Assembly resolution 35/198, the Working Group held meetings between 11 and 22 May to continue its work, with the participation of delegations of all regions. The Working Group had before it: the report of its Chairman to the General Assembly at its thirty-fifth session (A/C.3/35/13/Rev.1); a preliminary draft Convention on the protection of the rights of all migrant workers and their families contained in a working paper submitted by Algeria, Mexico, Pakistan, Turkey and Yugoslavia, subsequently joined by Egypt and Barbados (A/C.3/35/WG.1/CRP.7); a supplementary paper submitted by the International Labour Organisation (A/C.3/35/WG.1/CRP.8); a working paper submitted by the delegations of

* Previously issued under the symbol A/C.3/35/WG.1/CRP.16.

Finland, Greece, Italy, Portugal, Spain and Sweden (A/C.3/35/WG.1/CRP.9); a working paper submitted by the delegation of Morocco (A/C.3/35/WG.1/CRP.10); a working paper submitted by the delegation of Algeria (A/C.3/35/WG.1/CRP.11); a working paper submitted by the delegation of the Netherlands (A/C.3/35/WG.1/CRP.12); a working paper submitted by the delegation of Canada (A/C.3/35/WG.1/CRP.14); a working paper submitted by the delegations of Finland, Greece, Italy, Portugal, Spain and Sweden (A/C.3/35/WG.1/CRP.15). The working papers submitted to the Working Group during the intersessional meeting are annexed to the present report.

4. The Director of the Division of Human Rights made an introductory statement at the 11th meeting of the Working Group.

5. In the course of the intersessional meeting the representative of the ILO made several statements and was often consulted by the participants.

6. After a broad exchange of views on the manner in which the Working Group should continue its task in order to carry out its mandate, the Working Group decided to proceed to the first reading of the text of the preliminary draft Convention contained in document A/C.3/35/WG.1/CRP.7, which contains a preamble and an operative part. It was understood that such a first reading would allow participants to present preliminary remarks and tentative suggestions which, at this stage, would not commit any delegation, since several of them had not had the opportunity to receive specific instructions from their Governments concerning the contents of CRP.7.

I. GENERAL DEBATE ON THE PRELIMINARY DRAFT CONVENTION CONTAINED IN A/C.3/35/WG.1/CRP.7

7. The sponsors of the preliminary draft Convention contained in document A/C.3/35/WG.1/CRP.7 presented their work as a contribution to the task assigned to the Group in the light of its mandate by the General Assembly and as an attempt to strengthen the protection of the human rights of all migrant workers and their families, in accordance with the request of the General Assembly in resolution 35/198 and in conformity with the guidelines laid down in previous resolutions of the General Assembly, the World Conference of the Decade Against Racial Discrimination, Economic and Social Council and the Commission on Human Rights. In particular, they felt that fundamental human rights should be effectively guaranteed to all migrant workers, including undocumented workers, and their families. The draft Convention in A/C.3/35/WG.1/CRP.7 duly took into account the substantial work accomplished by other organizations in that field, in particular the ILO. The seven-member proposal was in no way meant to contradict existing international instruments, but to supplement and broaden the protection already accorded to migrant workers under instruments such as ILO Conventions No. 97 and No. 143 and the 1977 European Convention.

8. Several delegations expressed their views as to the nature of the Convention to be drafted and stressed that, in their opinion, such an instrument would have to be of a very general nature to serve as a framework which would allow other existing and future regional and bilateral arrangements to cover more detailed and specific aspects. In this sense these delegations were of the view that the draft in CRP.7 was too detailed. . . .

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9. Some other representatives considered that the draft as submitted in CRP.7 had serious defects both as to substance and in its form. Some of the substantive alternatives contemplated in this context are reflected in CRP.15 submitted by the delegations of Finland, Greece, Italy, Portugal, Spain and Sweden.

10. As regards the substance of the draft, certain delegations felt that the proposal went too far in assimilating authorized migrant workers and undocumented migrant workers so that, in their view, the text would tend to encourage illegal trafficking in labour, or, at least, to make it very difficult for States to take effective measures against such trafficking. Certain other definitions in the draft - such as that of "family" - were also criticized as being too broad and creating an excessive burden for receiving States.

11. As regards the form of the draft Convention, several delegations felt that the text would gain in clarity and precision if it were restructured to distinguish unambiguously between the fundamental rights inherent to all migrants, even non-documented, and additional rights to be recognized to documented migrant workers.

II. FIRST READING OF THE PREAMBLE OF THE PRELIMINARY DRAFT
CONVENTION SUBMITTED BY ALGERIA, MEXICO, PAKISTAN,
TURKEY AND YUGOSLAVIA (A/C.3/35/WG.1/CRP.7)

Preambular paragraph (1)

12. A reference in the first preambular paragraph to the International Convention on the Elimination of All Forms of Discrimination Against Women was forwarded by most delegations.

13. The delegations of Argentina, Belgium and the United States of America suggested to replace the words "Reaffirming the permanent validity of the principles and standards ..." by the words "Considering (or "Taking into account) the principles ...". It was also suggested that the words "and standards" be deleted. In favour of these suggestions, it was felt by some representatives that States which had not ratified the instruments listed were not in a position to confirm the validity of standards contained therein.

14. The representative of Algeria, supported by some other delegations, suggested to replace the words "permanent validity" by the word "importance". The representative of Jordan suggested to replace the words "permanent validity" by the words "universal applicability".

15. Some representatives suggested to delete the words "and documents" which, they felt, had no legal meaning. Other representatives felt that this deletion would unduly restrict the scope of the paragraph.

Preambular paragraph (2)

16. As regards preambular paragraph (2) it was suggested by the representatives of Argentina, Belgium and the United States that the word "Reaffirming" be replaced by the words "Taking into account".

17. Some delegations felt that consideration might be given to including ILO Convention No. 29 concerning forced labour and/or ILO Convention No. 105 concerning the abolition of forced labour among the list of ILO instruments enumerated in the paragraph.

18. It was suggested by the representative of the United States that the listing of ILO instruments should also include ILO Conventions No. 100 on equal remuneration, No. 111 on discrimination on employment and occupation, No. 110 concerning conditions of employment of plantation workers, No. 118 concerning equality of treatment (Social Security Convention), No. 122 concerning employment policy and No. 135 concerning workers' representatives.

19. It was generally felt that it would be appropriate to delete the reference to Convention No. 66, which was superseded by Convention No. 97, and to Convention No. 117, whose relevance to the subject-matter was rather remote. Some representatives felt that the listing of ILO instruments should be limited to those which are directly relevant to the protection of migrant workers, such as ILO Conventions No. 97 and No. 143, as well as ILO recommendations 86 and 151.

Preambular paragraph (3)

20. As concerns preambular paragraph (3) the delegations of Argentina, Belgium and the United States suggested that the word "Reaffirming" be replaced by the word "Considering".

Preambular paragraph (4)

21. Regarding preambular paragraph (4) the delegations of Argentina, Morocco, Uruguay and the United States felt that the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the Code of Conduct for Law Enforcement Officials were irrelevant to the subject-matter of the Convention, and suggested that preambular paragraph (4) should therefore be deleted. Some other representatives stressed the need to keep such references, as they felt that sometimes migrant workers are in practice subjected to inhuman or degrading treatment.

Preambular paragraph (5)

22. Several representatives stressed the importance of the ILO activities for the protection of migrant workers. The delegations of the United States and the

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Netherlands suggested that there should be a separate preambular paragraph exclusively for the purpose of recognizing the essential role of the ILO in this field. An alternative suggestion by Algeria was to insert an appropriate wording on the work of the ILO in preambular paragraph 2.

23. The representative of Norway suggested that mention should be made of the Commission for Social Development and of other United Nations agencies, such as FAO, which had important programmes for the welfare of migrant workers and their families.

24. A suggestion was made by Sweden, supported by some delegations, to replace the words "migrant labour" by the words "labour migration", but some other delegations insisted on retaining the words "migrant labour" or "migrant workers" which they felt described more aptly the object of the draft Convention.

Proposals for new preambular paragraphs

25. The representative of Brazil suggested the insertion of a new preambular paragraph between preambular paragraphs (5) and (6), reading as follows:

"Recognizing also the importance of bilateral and multilateral agreements concluded by States in this field,".

26. The representative of the Netherlands proposed to add a new preambular paragraph contained in working paper A/C.3/35/WG.1/CRP.12, which would read as follows:

"Welcoming conventions and regulations agreed upon within regional organizations on the protection of migrant workers, such as the European Convention on the Legal Status of Migrant Workers (1977),".

27. The representatives of Finland, Greece, Italy, Portugal, Spain and Sweden proposed a new preambular paragraph (6) contained in working paper A/C.3/35/WG.1/CRP.9, which would read as follows:

"Recognizing the progress made by certain countries on a regional or bilateral basis, as well as the importance and usefulness of multilateral and bilateral agreements for the protection of the rights of migrant workers,".

28. The representative of Algeria suggested the replacement, in this proposal, of the words "progrès déjà accomplis" by the words "certains progrès enregistrés par certains Etats". This suggestion was supported by several other delegations who felt that the importance and usefulness of bilateral and multilateral agreements had been proved only in some cases.

Preambular paragraphs (6) to (11)

29. The representatives of India and the Union of Soviet Socialist Republics, supported by some other delegations, suggested that preambular paragraphs (6)

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to (11) be reconsidered and possibly merged. The co-sponsors of CRP.7, in the light of views expressed, offered to attempt a reformulation of those paragraphs.

Preambular paragraph (6)

30. A number of representatives considered that preambular paragraph (6), concerning future expansion of migratory flows, was couched in terms too speculative and dogmatic and that the mention of "interdependence" in this context was debatable. They proposed the deletion of this paragraph.

31. The representative of Mexico suggested a revised preambular paragraph (6) reading as follows:

"Reconociendo que las migraciones laborales reflejan una interdependencia creciente entre los miembros de la comunidad internacional, y que sus flujos involucran en el presente a millones de personas, y tomando en cuenta que las estadísticas disponibles muestran que sus tendencias son crecientes,".

32. The representative of Turkey suggested replacing the word "expand" by the word "exist".

33. The representative of Norway suggested a new paragraph which he subsequently withdrew. That paragraph read as follows:

"Bearing in mind that workers should not be forced by economic circumstances to migrate for the purpose of obtaining employment,".

Preambular paragraphs (7), (8), (9) and (10)

34. In the opinion of some representatives, these paragraphs gave a rather unbalanced picture of labour migration problems, by over-emphasizing the "positive" aspects of such phenomena. It was felt by these delegations that the text should avoid giving the impression that labour migrations were to be perpetuated as a permanent aspect of the economic policies of developing countries.

35. The representatives of Finland, Greece, Italy, Portugal, Spain and Sweden suggested replacing preambular paragraphs (7), (8), (9) and (10) by new paragraphs contained in working paper A/C.3/35/WG.1/CRP.9, and reading as follows:

(7) "Considering the situation of vulnerability in which migrant workers find themselves in the receiving societies for objective reasons relating, among other things, to their absence from their country of departure and to the difficulties of their insertion in the receiving society,"

(8) "Bearing in mind on one hand the contribution of migrant workers to the economy of the receiving countries and on the other hand the social costs connected with the migratory process,"

- (9) "Recognizing the necessity to promote a balanced international economic development in order to minimize the need for and problems linked with international migration,"
- (10) "Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of countries in the international community,".

Preambular paragraph (11)

36. The representative of Jamaica suggested that preambular paragraph (11) should include a reference to "the fact that migration of workers causes dislocation among their families".

37. The representative of Morocco suggested to replace the words "have a positive effect, and sometimes a negative one" by the words "have various effects".

38. The representatives of Finland, Greece, Italy, Portugal, Spain and Sweden were in favour of replacing preambular paragraph (11) by a new paragraph contained in working paper A/C.3/35/WG.1/CRP.9, and reading as follows:

"Taking into account that often migration is the cause of serious problems for the families of migrant workers themselves,".

Preambular paragraph (12)

39. The representative of Norway suggested that preambular paragraph (12) be deleted. The representatives of Algeria, Brazil, India, Morocco and the United States suggested deletion of the reference to "the rights of aliens" or to replace the word "aliens" by the term "migrant workers". In support of this suggestion, it was felt that the specific human rights problems of migrant workers were distinct in important respects from the broader issues concerning the rights of non-citizens in general.

40. The representatives of Finland, Greece, Italy, Portugal, Spain and Sweden suggested a new preambular paragraph (12) contained in working paper A/C.3/35/WG.1/CRP.9, reading as follows:

"Convinced that the status and rights of migrant workers and their families require appropriate international protection,".

Preambular paragraph (13)

41. Some delegations advanced the view that the purpose of the Convention should be to prevent illegal migration, to suppress clandestine movements of migrants and combat the illicit traffic of workers. They stated that abusive migrations might

constitute a crime in the States where they have occurred. They suggested therefore that the Convention should not contain any clause which might risk encouraging such illicit or clandestine movements. The delegations of Belgium, Norway and the United States suggested deletion of the words "undocumented workers".

42. This suggestion was strongly opposed by the co-sponsors of CRP.7 and several other delegations, who stressed that fundamental human rights and some basic labour rights should be recognized for all migrant workers and their families who have entered the territory of another State and taken up employment in that State, regardless of their migratory status. They also stressed that undocumented migrant workers frequently paid taxes or contributions in the State where they were employed and that their corresponding entitlements must be guaranteed. The co-sponsors, therefore, emphasized the need to establish in the Convention an appropriate protection of those fundamental rights to which every person is entitled everywhere and those which directly derive from a de facto labour relationship. This, they stated, in no way should be interpreted as favouring undocumented migration, but simply as a recognition of the need to extend to a certain degree the protection under the Convention on the basis of a reality, no matter how undesirable it may be.

43. The representative of Canada suggested replacing the terms "undocumented workers" by the terms "migrant workers in an irregular situation".

44. A debate took place concerning the precise meaning and relevancy of the distinction established by the draft Convention in CRP.6 between "fundamental human rights" and "labour rights". It was stated on behalf of the sponsors that the term "labour rights" was understood by them as referring to those rights which flowed from the working relationship between employer and worker, and which should be recognized for all workers regardless of their migratory status, while "fundamental rights" were inherent to every human being irrespective of his occupation. Other delegations stated that, while human rights should be recognized for everyone, the entitlements to labour rights of undocumented migrant workers was to some extent questionable. Some representatives felt that the distinction between human rights and labour rights was not necessary, as the rights of migrant workers in all fields are indivisible and should be given equal attention.

45. The representatives of Finland, Greece, Italy, Portugal, Spain and Sweden suggested a new preambular paragraph (13) contained in working paper A/C.3/35/WG.1/CRP.9, and reading as follows:

"Bearing in mind that the human problems involved in migration are even deeper in the case of illegal migration and that therefore appropriate action should be reinforced also at the international level in order to prevent and suppress illegal and clandestine movements and traffic of migrant workers, while at the same time assuring the protection of their fundamental human rights,".

Preambular paragraph (14)

46. The representative of Morocco favoured a new preambular paragraph (14) contained in working paper A/C.3/35/WG.1/CRP.10, and reading as follows:

"Convinced of the need to enlarge the scope of the international instruments already drafted to protect migrant workers, by creating a new legal framework capable of universal application and containing the basic rules to be respected in order fully to preserve the fundamental rights of migrant workers and of their families,".

47. The representative of Algeria suggested a new preambular paragraph (14) contained in working paper A/C.3/35/WG.1/CRP.11, reading as follows:

"Convinced that, despite the existence of the above-mentioned international instruments, it is necessary to ensure a more universal (or broader) protection of the rights of all migrant workers and of their families,".

48. The representative of the Byelorussian Soviet Socialist Republic suggested that the words "juridical framework", which he considered to be rather vague, be replaced by the words "legal Instrument(s)".

49. The representatives of Finland, Greece, Italy, Portugal, Spain and Sweden favoured deletion of the words "and labour rights" (see working paper A/C.3/35/WG.1/CRP.9).

III. DEFINITIONS

Article 1

50. The representatives of France and the United States, supported by some other delegations, suggested that definition of the term "migrant workers" in the proposed Convention should be formulated in terms similar to that of ILO Convention No. 143, and should exclude frontier workers, seamen, artists, members of liberal professions on a short-term basis and persons present in a State for training or education purposes.

51. It was felt by some delegations that the definitions in the preliminary draft A/C.3/35/WG.1/CRP.7 were too broad as they might be interpreted as including self-employed persons.

52. Other delegations pointed out that the definitions of "migrant workers" in the proposed Convention should be broader than that used in Part II of ILO Convention No. 143, since the purpose and scope of the draft Convention were broader than those of the ILO instrument. In this connexion, the suggestion was made that the proposed Convention should also cover foreign workers employed by foreign companies for a determined period in a third State.

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53. The representative of the USSR suggested the deletion of the words "or performing" and the replacement of the word "activity" by the word "employment".

54. The representative of the United States suggested that the definitions in the proposed Convention should contain quite separate clauses on migrant workers and on migrants in an irregular situation.

55. It was generally understood that categories of workers such as Government agents and representatives and international civil servants should not be covered by the proposed Convention as they were already protected under other international instruments.

56. The representative of Argentina suggested replacing the words "His presence in the State of destination may be temporary or permanent" by the words "Su presencia en el Estado de destino puede ser de carácter temporal o de no residente", and adding a new paragraph after paragraph 1, reading as follows:

"A los fines de la presente Convención se entiende como 'temporal' la situación de aquellas personas que se trasladan al país de destino sin el ánimo de residir permanentemente en el mismo o a aquellas que aún en este supuesto y habiendo obtenido una autorización de permanencia definitiva o por tiempo indefinido por parte del país de destino, puedan, según la legislación interna de cada país, ser expulsadas o cancelada su autorización en cualquier tiempo por causas no imputables al trabajador o por haber perdido su empleo."

Article 2

57. Regarding the definition of the family of migrant workers, the sponsors explained that, after considering various alternative criteria including that of economic dependency, they had relied mainly on the concept of "legal guardianship", a notion which was well established in most legal systems.

58. Some delegations indicated their preference for the narrower and, in their view, more precise definition set forth in Article 13 of ILO Convention No. 143 according to which the principle of reunification of families would apply in respect of the spouse and dependent children, father and mother.

59. The term "legal guardianship" used in draft article 2 was considered by some representatives as likely to raise many problems of interpretation as the contents of these judicial categories varied widely from one system to another. Such difficulties might arise, for instance, as regards the legal status of concubines.

60. The term "minor children" also was regarded as too vague by some delegates, who pointed out that the age and other conditions of legal majority varied from country to country.

61. The representative of Argentina, supported by some other delegations, suggested that the article be amended to require that family members be recognized as such under the law of both sending and receiving States.

62. Another suggestion, made by the representatives of France, the Netherlands and some other delegations, was to state that the definition of the "family" of migrant workers for the purpose of the Convention should be left exclusively to the receiving States, subject to any bilateral agreements which might be concluded with sending States.

63. It was suggested by the representative of the United States that article 2 be replaced by a composite formula under which the family of migrant workers, for the purpose of the Convention, would consist basically of the spouse and unmarried children under 21, and additionally of any other persons which might be mentioned in the relevant laws of the State of employment and/or in bilateral agreements.

64. Some delegations, on the other hand, felt that draft article 4 might be a little too restrictive. A suggestion made by the representative of Turkey was to replace the word "laws" by the word "criteria" and to delete the word "legal" before "guardianship".

ANNEX XIII

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

DRAFT REPORT OF THE OPEN-ENDED WORKING GROUP ON THE DRAFTING
OF AN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

Corrigendum

Chairman: Mr. Antonio González de León (Mexico)

1. In paragraph 3, the reference to document A/C.3/35/WG.1/CRP.15 should read:

a working paper submitted by the delegations of Algeria, Mexico, Pakistan, Turkey and Yugoslavia, subsequently joined by the delegations of Barbados and Egypt, containing a preliminary draft of a convention on the protection of the rights of all migrant workers and their families (A/C.3/35/WG.1/CRP.7 and Add.1 and 2);
2. In paragraph 3, after the reference to document A/C.3/35/WG.1/CRP.12, insert:

a working paper submitted by the delegation of Sweden (A/C.3/35/WG.1/CRP.13);
3. In paragraph 3, the reference to document A/C.3/35/WG.1/CRP.15 should read:

a working document submitted by the delegations of Finland, Greece, Italy, Portugal, Spain and Sweden, subsequently joined by the delegation of Norway, containing proposals for the framework for the international convention on the protection of rights of all migrant workers and their families;
4. In paragraph 5, add at the end:

UNESCO, WHO, FAO and EEC were also present as observers.
5. After paragraph 56, insert a new paragraph reading:

The representative of Sweden suggested, as an alternative definition of "migrant worker", the following wording, which appears in document A/C.3/35/WG.1/CRP.13:

For the purposes of this Convention, the term "migrant worker" means any person who has been authorized by a State, other than that of which he is a citizen,

/...

- (a) to take up paid employment;
- (b) to exercise independent economic activity; or
- (c) to undertake specific duties or assignments in the territory of the authorizing State,

as well as any person who, without having been authorized thereto, has been employed in the territory of a State, other than that of which he is a citizen.

ANNEX XIV*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

DRAFT REPORT OF THE OPEN-ENDED WORKING GROUP ON THE DRAFTING
OF AN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

(Intersessional meeting - 11-22 May 1981)

(continued)

Chairman: Mr. Antonio Gonzalez de Leon (Mexico)

Article 3

1. Some delegations felt that if the proposed Convention were to cover frontier workers, it should also be extended to seasonal workers. In the views of other delegations neither frontier workers nor seasonal workers should be included in the scope of the proposed Convention.
2. The delegations of Italy and Belgium, supported by others, questioned the usefulness of laying down the definitions contained in articles 3 and 4 of the proposed Convention, as they were rarely referred to in the remaining part of the preliminary draft CRP.7.

Article 4

Subparagraph (a)

3. As concerns the definition of the term "recruitment" various delegations expressed the view that such a definition should be based upon part I of ILO Recommendation No. 86 and annexes I and II to ILO Convention No. 97, meaning the engagement of a person in one territory on behalf of an employer in another territory, or the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with any arrangements related to such operations, including the seeking for and selection of emigrants and preparations for their departure.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.16/Add.1.

4. The delegation of Morocco and several delegations were in favour of deleting the word "orally". In their view, the validity of the contracts of migrant workers was, in many legislations, dependent upon written evidence of such contracts. The question of the validity of oral as opposed to written contracts, as a source of labour rights, was discussed at length by the Group with the participation of the ILO. However, there was no prevailing opinion in this respect.

Subparagraph (b)

5. As concerns the term "introduction", it was felt that such definition should be more precise. It was suggested that this term should be used in the proposed Convention to mean, as in ILO Convention No. 97, any operations for ensuring or facilitating the arrival in or admission to a territory of a migrant worker who has been given employment. In this connexion, some delegations suggested to use the term "entry" instead of "admission".

Subparagraph (c)

6. The delegations of Jordan favoured replacing the word "moment" by the words "date or time" and the deletion of all the words after the word "destination".

Subparagraphs (d) and (e)

7. As regards the meaning of the term "State of origin", it was suggested that this definition be reviewed, as the State from which a worker departs may not be necessarily his State of nationality.

Substantive articles

8. Various delegations felt that the detailed substantive provisions of the preliminary draft in CRP.7 constituted a solid basis for fruitful debates. In the view of certain representatives, however, these provisions were sometimes unclear and repetitious. These delegations considered, in particular, that the provisions often failed to indicate clearly whether they were meant to be applicable to all migrant workers, only to authorized migrant workers or solely to undocumented migrant workers.

Article 5

9. It was stated by the sponsors that draft article 5 was meant to apply to both authorized and undocumented migrant workers.

10. Some representatives felt that it was highly inappropriate and improper to claim "equality before the law" for undocumented migrants whose very presence in the territory of the State of destination violated the laws of that country. Apart

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from this basic objection, these representatives considered that many of the rights mentioned in the illustrative list of this article, for instance pension rights, could not, for practical administrative reasons, be granted to clandestine migrant workers whose identity and whereabouts could not be attested to in documentary form.

11. It was the suggestion of the representative of the United States that, inasmuch as the article would apply to undocumented migrant workers, it should guarantee "fair treatment" or "due process" rather than "equality before the law".

12. The delegations of Argentina, Brazil and the United States suggested that the whole phrase after the words "their own citizens" should be deleted. The representative of Argentina further suggested a formulation under which equality before the law would be recognized "in accordance with national legislation".

13. Questions were raised as to the meaning of the terms "equitable and satisfactory" which were found too vague by some delegations.

14. According to the representative of the United States, the right to repatriate earnings and savings should be recognized only "in accordance with currency regulations".

New framework for the Convention proposed by the delegations
of Finland, Greece, Italy, Portugal, Spain and Sweden in
A/C.3/35/WG.1/CRP.15

15. The sponsors of this proposal stated that it was submitted as a first outline of a possible framework for the Convention. It constituted a restructuring of many of the subject-matters dealt with in CRP.7, without implying at this stage any acceptance of the substance or wording of the seven-Power draft. Some provisions suggested in CRP.15 were additional to those contained in CRP.7.

16. The structure proposed in CRP.15 was as follows: Preamble; section I to contain definitions which would attempt notably to distinguish between authorized and undocumented migrant workers; section II to recognize fundamental human rights inherent to all migrant workers; section III to deal with the basic rights of authorized migrant workers; section IV to deal with special categories of authorized migrant workers; section V to concern the promotion of sound and equitable conditions for international migrations, including inter-State co-operation to prevent and punish illegal and clandestine migratory movements and trafficking; and section VI to contain various final clauses including a general limitation clause in the interest of public order, public security and public health.

ANNEX XV*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

DRAFT REPORT OF THE OPEN-ENDED WORKING GROUP ON THE DRAFTING
OF AN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

(Intersessional meeting - 11-22 May 1981)

(continued)

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

Article 5 (continued)

1. The representative of Argentina suggested an amendment to article 5 of CRP.7 contained in document A/C.3/35/WG.1/CRP.18, and reading as follows:

"New paragraph

Nothing in this Convention shall be considered to be a limitation on the right of every State to lay down in its legislation distinctions between nationals and foreigners in accordance with the principles embodied in the Universal Declaration of Human Rights.

Article 5

The receiving States shall grant migrant workers and their families full equality before the law with their own citizens in the same circumstances, without prejudice to the provisions of article ... (new paragraph)."

2. The representative of Jordan suggested an amendment to article 5 of CRP.7 contained in document A/C.3/35/WG.1/CRP.19, and reading as follows:

"(a) There shall be no discrimination before the law against documented migrant workers and their families by the State of destination.

"(b) Those workers are entitled to equitable treatment and work conditions like the nationals.

"(c) The State of destination shall facilitate all forms of compensation

* Previously issued under the symbol A/C.3/WG.1/CRP.16/Add.2.

and repatriation to which those workers are entitled, whether in the State of destination or the State of origin.

"(d) Unauthorized migrant workers shall enjoy necessary protection under the law of the State of destination whenever it is deemed necessary and mainly whenever there seems to be any violation of their basic human rights."

3. The representative of Finland said that the substance of draft article 5 in CRP.7 was dealt with according to a new structure in section III, paragraphs 4 and 5 of CRP.15 (see next section below), but that the authors of CRP.15 intended to recognize such rights only for authorized migrant workers.

4. At the request of several delegations, the co-sponsors of CRP.7 explained the aims of proposed article 5. The insertion of the principle of equal protection under the law for all migrant workers in no way was intended to imply total equality with the nationals of States of destination, since the recognition of this principle implicitly means "equality under the law in equal circumstances", that is to say that all men are equal on the basis of each one's personal status. Therefore, foreigners in any State are, by personal status, subject to certain limitations of rights, e.g. in the matter of political rights. These limitations do not, however, contradict the principle of equal protection under the law. On the other hand, the co-sponsors felt that a principle such as equal pay for equal work or work of equal value is a universal principle which could not be challenged any longer in itself. Therefore, the co-sponsors were convinced that this principle and others mentioned in article 5 should be reaffirmed in the Convention for all migrant workers. What the Working Group could perhaps consider doing was to discuss the modalities and extent of applicability of such principles with respect to different types of migrant workers according to the national legislation of the States of destination no doubt being cast on the validity of such principles *per se*. Once more, the co-sponsors were interested in making clear that their desire to apply these principles to all migrant workers in no way could be interpreted as an encouragement to undocumented or illegal migration.

New framework for the Convention proposed by the delegations of
Finland, Greece, Italy, Portugal, Spain and Sweden in document
A/C.3/35/WG.1/CRP.15 (continued)

4. The representative of Italy, in introducing A/C.3/35/WG.1/CRP.15, said that the purpose of these proposals was to ensure realistically equitable treatment for all migrant workers, while taking into account the necessary distinctions as to the extent of the rights granted arising from differences in migratory status. He emphasized the importance of the preventive measures in section V and the necessity of having an adequate machinery for the supervision of the implementation of the proposed Convention.

5. The representative of Finland, in introducing section III of CRP.15, referred to the general principles contained in that section which, in his view, could be accorded only to authorized migrant workers who have taken up employment. He also referred to specific cultural, social and economic rights such as the preservation of cultural identity, as well as to the questions of transfer of earnings and taxation.

6. The Group did not have the time to discuss the proposals in CRP.15.

ANNEX XVI*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of Argentina

Article 1, second paragraph

New wording

Their presence in the State of destination may be of a temporary or non-resident character.

New paragraph

For the purposes of this Convention, the word "temporary" shall be used to describe the situation of those persons who move to the country of destination without intending to reside permanently there or of those who, even on this assumption and having obtained an authorization from the country of destination to remain permanently or for an indefinite period, may, under the internal legislation of each country, be expelled or have their authorization revoked at any time for reasons not attributable to the workers or for having lost their employment.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.17.

ANNEX XVII*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of Argentina

New paragraph

Nothing in this Convention shall be considered to be a limitation on the right of every State to lay down in its legislation distinctions between nationals and foreigners in accordance with the principles embodied in the Universal Declaration of Human Rights.

Article 5

The receiving States shall grant migrant workers and their families full equality before the law with their own citizens in the same circumstances, without prejudice to the provisions of article ... (new paragraph).

* Previously issued under the symbol A/C.3/35/WG.1/CRP.18.

ANNEX XVIII*

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS
AND DIGNITY OF ALL MIGRANT WORKERS

Working paper submitted by the delegation of Jordan

Amendment to Article 5 contained in document A/C.3/35/WG.1/CRP.7

(a) There shall be no discrimination before the law against documented migrant workers and their families by the State of destination.

(b) Those workers are entitled to equitable treatment and work conditions like the nationals.

(c) The State of destination shall facilitate all forms of compensations and repatriation of which those workers are entitled whether in the State of destination or the State of origin.

(d) Unauthorized migrant workers shall enjoy necessary protection under the law of the State of destination whenever it is deemed necessary and mainly whenever there seems to be any violation of their basic human rights.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.19.

ANNEX XIX*

Working paper submitted by the delegation of
the Netherlands

Amendment to CRP.16 (see annex XII)

Substitute the first sentence of paragraph 3 by the following:

"3. In pursuance of General Assembly resolution 35/198, the Working Group held 15 meetings between 11 and 22 May to continue its work; the meetings, which were open to all Members of the United Nations, were attended by representatives of the following States: /to be filled out by the Secretariat/.

* Previously issued under the symbol A/C.3/35/WG.1/CRP.20.