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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

Report of the Open-ended Working Group

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

INTRODUCTION

1. The Working Group, open to all Member States, was established under General Assembly resolution 34/172 of 17 December 1979, to elaborate an international convention on the protection of the rights of all migrant workers and their families.
2. By its resolution 1980/16 of 30 April 1980, the Economic and Social Council, inter alia, decided to follow the progress of work relating to the elaboration by the General Assembly of the international convention in question.
3. The Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families, held its first session at United Nations Headquarters from 8 October to 19 November 1980. The report of the Chairman of the Working Group was submitted to the General Assembly at its thirty-fifth session (A/C.3/35/13).
4. By its resolution 35/198 of 15 December 1980, the General Assembly, inter alia, took note of the report of the Chairman of the Working Group, welcomed the fact that the Working Group had begun the elaboration of a Convention on the Protection of the Rights of All Migrant Workers and Their Families; decided that the Working Group 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 Assembly, and decided that the Working Group should meet during the thirty-sixth session of the Assembly in order to continue its work on the elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families.

5. By its resolution 1981/35 of 8 May 1981, the Economic and Social Council, inter alia, expressed the hope that substantial progress would be made by the Working Group during the intersessional meeting scheduled for May 1981, pursuant to Assembly resolution 35/198, in order that it might best carry out its mandate and complete the elaboration of the Convention during the thirty-sixth session of the Assembly.

6. The Working Group held its intersessional meeting at United Nations Headquarters from 11 to 22 May 1981. The Group was unable to adopt a report owing to lack of time. However, the Chairman of the Working Group transmitted to the Secretary-General the draft report prepared by him on the intersessional meeting of the Group, together with all other documents submitted by participants during the intersessional meetings (A/36/378). The Governments of Denmark (on behalf of the Nordic countries), Italy, the Netherlands, Spain, and the United States also transmitted to the Secretary-General their specific revisions of and amendments to the Chairman's draft report. These revisions and amendments are contained in document A/36/383.

7. In accordance with paragraph 6 of General Assembly resolution 35/198, and prior to the first meeting of the Working Group during the thirty-sixth session of the General Assembly, the Secretary-General communicated to Governments, to the competent organs of the United Nations system and to the interested international organizations, the draft report submitted by the Chairman of the Working Group and the documents annexed to it as well as the communications received from Governments concerning the Chairman's draft report, in order to ensure effective preparation of the work of the General Assembly at its thirty-sixth session on the elaboration of the Convention.

8. The Working Group met at United Nations Headquarters during the thirty-sixth session of the General Assembly from 12 October to 20 November 1981, under the chairmanship of Mr. Antonio González de León. It held 16 meetings on 12, 19-23, 27, 29 and 30 October and on 2, 3, 5, 6, 17 and 20 November 1981 with the participation of delegations from all regions, some of which included experts on questions relating to migrant workers. Likewise, representatives of international organizations with expertise or competence in dealing with migrant worker matters also took part in the meetings of the Working Group.

9. The Working Group had before it the following documents:

(a) Letter of the Chairman of the Working Group dated 25 May 1981, together with his draft report on the intersessional meeting of the Group in May 1981 as well as other documents submitted during that session (A/36/378 and annexes);

(b) Communications submitted by the Governments of Denmark (on behalf of the Nordic countries), Italy, the Netherlands, Spain and the United States, relating to the draft report of the Chairman of the Working Group on its intersessional meeting (A/36/383 and annexes);

(c) Suggestions submitted by Finland, Italy, Norway, Portugal, Spain and Sweden relating to proposals presented in document A/36/378, annexes IX-XI (A/C.3/36/WG.1/CRP.1 and Add.1-2);

(d) Compilation of proposals made by members of the Open-ended Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families (A/C.3/36/WG.1/WP.1).

(e) Text of the Preamble and other articles of the Convention provisionally agreed by the Working Group at its present session (A/C.3/36/WG.1/CRP.2 and Add.1).

10. At its first meeting on 12 October 1981, the Working Group discussed questions relating to the organization of its work.

#### I. CONSIDERATION OF THE PREAMBLE AND ARTICLES OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

11. The present report exclusively contains results of discussion in the Working Group regarding specific provisions of the Convention and does not contain statements of a general nature made during the debates. In the texts set forth throughout this report which were considered by the Working Group, the only language which has been provisionally agreed upon is that outside square brackets. Square brackets indicate that the Working Group did not reach agreement on the proposed language which remains between square brackets. 1/

12. At its second meeting, on 19 October 1981, the Working Group resumed its consideration of the Convention on the basis of the compilation of proposals contained in document A/C.3/36/WG.1/WP.1, which covers proposals mentioned in document A/36/378 and its annexes and suggested in document A/C.3/36/WG.1/CRP.1. It decided to continue the first reading of the draft of the Convention, taking into account all proposals and suggestions made by its members during the previous and the present session, in order to reach agreement on a tentative text which would be further examined for adoption at a later stage. With regard, in particular, to the preamble and the first five articles (definitions) of the Convention, the Working Group had before it, besides the new suggestions made by Finland, Italy, Norway, Portugal, Spain and Sweden in document A/C.3/36/WG.1/CRP.1, the proposals which had already been made by various delegations during its intersessional meeting in May 1981 (document A/36/378 and annexes III-XVIII). It therefore decided to consider at least all the proposals relating to the preamble together. The representative of Italy made a statement with regard to document A/C.3/36/WG.1/CRP.1.

1/ See paras. 13, 18, 19, 25, 34, 37, 43, 45, 47, 50, 54, 56, 58, 61, 72, 75.

13. At the same meeting, the Working Group provisionally agreed on the following text of paragraphs 1 to 5 of the preamble of the Convention:

"Preamble

"The States Parties to this Convention,

"(1) [Reaffirming] [Taking into account] the [permanent validity] [the importance] of the principles [and standards] [norms] embodied in the basic instruments 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, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination Against Women,

"(2) [Reaffirming also] [Taking into account] the principles [and standards] [set forth in the relevant instruments] elaborated within the framework of the International Labour Organisation, especially the Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151),

"(3) Reaffirming the importance of 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, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

"(5) Recognizing the importance of the work carried out in connexion with [migrant labour] [migrant workers and their families] in various organs of the United Nations system, in particular in the Commission on Human Rights, the Commission for Social Development, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, and in various regional organizations,"

14. The Group also agreed that the importance of the role of the International Labour Organisation should be stressed in a separate paragraph (6).

15. At its third meeting, on 20 October 1981, the Working Group heard an introductory statement on document A/C.3/36/CRP.1 made by the representative of Portugal on behalf of the co-sponsors of that document: Finland, Italy, Norway, Portugal, Spain and Sweden. It then considered the text for a new preambular paragraph (6) proposed by the representative of the United States in order to

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emphasize and reflect accurately what his delegation considered to be the unique responsibility and ability of the International Labour Organisation to deal with migrant worker matters. The proposed text was the following:

"Recognizing that a principal objective of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, that the International Labour Organisation has thus been vested with special authority and responsibility to deal with the subject of migrant workers, and that the International Labour Organisation possesses unique competence, expertise, and experience in migrant worker matters,"

16. The representative of Jamaica, supported by the representatives of Argentina and Yugoslavia, proposed to replace the second part of the text, after the words "countries other than their own", with the following text: "and that the International Labour Organisation has made a significant contribution to the promotion of the interests of migrant workers". The representative of Morocco proposed a new text as follows:

"Recognizing the importance of the International Labour Organisation in the defence of the interests of migrant workers,"

17. On the proposal of the Chairman, the representatives of the United States, Jamaica and Morocco agreed to hold informal consultations in order to find a compromise text to be proposed to the Working Group.

18. At the same meeting, the Working Group provisionally agreed on the following text of preambular paragraphs 7, 8 and 9 of the Convention:

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

"(8) 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,

"[(9) Aware of the [positive] impact that the 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 the new international economic order,]

19. At its fourth meeting, on 21 October 1981, the Working Group provisionally agreed on the following text of preambular paragraphs 10, 11, 12, 13 and 14 of the Convention:

"[(10) 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,]

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"(11) Considering the situation of [vulnerability] in which migrant workers find themselves in the receiving societies [for reasons relating, among other things, to their absence from their country of origin and to the difficulties of their [insertion] [adaptation] [presence] in the receiving society,] [for various reasons]

"[(12) 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,]

"[(13) Bearing [also] 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,]

"(14) Recognizing the necessity to promote a balanced international economic development in order to minimize the [need for and] problems linked with international migration,"

20. At the same meeting, the Working Group discussed, in a general debate, the formulation of a text for preambular paragraph 15. On the proposal of the Chairman, the Group agreed to hold informal consultations to elaborate the text on the basis of proposals for preambular paragraphs of the Convention contained in paragraphs (10) and (12) of column A and paragraph (12) of column C of document A/C.3/36/WG.1/WP.1.

21. At its fifth meeting, on 22 October 1981, the Working Group resumed consideration of the text for a new preambular paragraph (6) on the basis of the proposal made, at the third meeting, by the representative of the United States. After a brief discussion, the Working Group, at the request of several delegations, agreed to hold further consultations on that text.

22. The Working Group also provisionally agreed on a text for preambular paragraphs 15 and 16, as follows:

"(15) Convinced that the status and fundamental rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

"(16) Taking into account that often migration is the cause of serious problems for the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,"

23. In considering a text for preambular paragraph 17, the Working Group based its discussion on the two proposals for preambular paragraphs of the Convention dealing with the question of the human rights of undocumented migrant workers which were contained in paragraphs (13) of column A and 13 of column C of document A/C.3/36/WG.1/WP.1. The Working Group provisionally agreed to retain the text of the two proposals in brackets under preambular paragraph 17 of the Convention on

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the understanding that the elaboration of one text for that paragraph would be considered at a later stage. The two texts proposed for preambular paragraph 17 were the following:

"[(17) 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.]"

"[(17) Bearing in mind that 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] [diminish and discourage] illegal and clandestine movements and traffic of migrant workers, while at the same time assuring the protection of their fundamental human rights,]"

24. With regard to preambular paragraph 17, the representative of Ecuador referred to the phrase "fundamental human rights" included in the draft proposals both in column A and column C of document A/C.3/36/WG.1/WP.1 and requested that in this paragraph, as in all the provisions of the text of the Convention that contained the same formulation, it should be changed to read "the human rights and fundamental freedoms", in accordance with the already agreed-upon language used in the Charter of the United Nations, the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

25. At the same meeting, the Working Group provisionally agreed on a text for preambular paragraphs 18, 19 and 20, as follows:

"(18) Considering that in most cases workers who are undocumented or in an irregular situation are employed under worse conditions of work than other workers, including migrant workers in a regular situation, and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

"[(19) Considering that the widest recognition of the rights of all migrant workers and the effective safeguarding of these rights will accordingly tend to discourage the seeking of migrant workers who are undocumented or in an irregular situation and to contribute to a reduction in irregular migration flows,]

"[(20) Considering however that, in order not to discourage prospective migrants for employment from respecting the normal procedures established by the competent authorities of the country concerning the recognition of certain rights ought to be limited to migrant workers in a regular situation, including those whose situation has been regularized,]"

26. At its sixth meeting, on 23 October 1981, the Working Group continued its consideration of the text for a new preambular paragraph 6 and provisionally agreed to retain in brackets the text proposed by the representative of the United States, the amendment to that text proposed by the representative of Jamaica and the alternative text proposed by the representative of Morocco, on the understanding that the elaboration of one text for preambular paragraph 6 would be considered at a later stage. The proposed texts were the following:

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"[(6) Recognizing that a principal objective of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, [that the ILO has thus been vested with special authority and responsibility to deal with the subject of migrant workers and that the ILO possesses unique competence, expertise, and experience in migrant worker matters,] [and that the ILO has made a significant contribution to the promotion of the interests of migrant workers,]"

27. At the same meeting the Working Group also provisionally agreed on a text for a preambular paragraph 21 as follows:

"(21) Convinced therefore of the need to bring forth the international protection of the rights of all migrant workers and their families reaffirming and establishing basic norms in a comprehensive Convention which could be applied universally,

"Have agreed on the following articles:"

28. The Working Group thus concluded its first reading of the preamble of the Convention on the understanding that the text which was provisionally agreed would be further examined at a later stage in order to simplify its formulation and to adopt a single text, eventually without brackets.

29. The representative of the United States stated that, in the view of his Government, the Working Group should take into account, in a further examination of the text of the preamble of the Convention, the following considerations: (1) the obligation of migrant workers, however defined, to comply with the laws and regulations of both States of origin and receiving States; (2) the sovereign right of every State to determine and apply its own immigration laws and policies concerning admission to its territory; (3) the question of the obligations of States of origin to co-operate with the labour and immigration authorities of States of destination, to take measures to monitor and regulate the movement of migrant workers. This view was supported by the representative of the Netherlands.

30. At the same meeting, the Working Group had a preliminary discussion on the Framework to be given to the operative part of the Convention. The Group examined three possible ways of proceeding in the elaboration of the articles of the Convention. One was proposed by the representative of the Netherlands with the support of the representative of the United States and consisted of the formulation of definitions concerning migrant workers followed by the formulation of rights which are applicable to documented migrant workers in a regular situation and by

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the formulation of rights which are applicable to undocumented migrant workers or migrant workers in an irregular situation. The second one was proposed by the representative of Jamaica with the support of the representatives of Algeria, Egypt, Spain and Turkey and consisted of the formulation of a list of principles and basic rights which are applicable to all migrant workers and their families regardless of their status followed by the formulation, in separate sections of the Convention, of a list of rights applicable to documented migrant workers in a regular situation. The third one was proposed by the representative of Sweden and consisted of the formulation of rights applicable to undocumented migrant workers or migrant workers in an irregular situation before formulating the rights applicable to documented migrant workers in a regular situation.

31. The representatives of Italy and Spain, supported by the representative of Greece, stated that the question of definitions concerning migrant workers could be examined in detail by the Working Group at a later stage. The representative of Italy also pointed out that it was necessary to find a consensus on a number of provisions concerning the fundamental rights of all migrant workers and their families before dealing with the question of rights applicable to different categories of migrant workers. The Working Group could then consider whether and what kind of machinery was needed for the implementation of the Convention.

32. On the proposal of the representatives of Italy and Spain, the Working Group agreed to hold informal consultations with regard to the way of proceeding in the elaboration of the articles of the Convention.

33. At its seventh meeting, on 27 October 1981, at the proposal of the Chairman and after consultation, the Working Group agreed to begin its first reading of the operative part of the Convention by examining proposals for a list of general principles concerning fundamental human rights which are applicable to all migrant workers and their families regardless of their status, which would become part II of the Convention. The Working Group continued to consider as a basis for discussion the compilation of proposals contained in document A/C.3/36/WG.1/WP.1 and in particular, the provisions proposed by the delegations of Finland, Italy, Norway, Portugal, Spain and Sweden in part II of column C together with the corresponding provisions proposed by the delegations of Algeria, Barbados, Egypt, Mexico, Pakistan, Turkey and Yugoslavia in column A of that document. The Working Group also agreed that the only general principle which would be examined at a later stage would be the one concerning equality before the law contained in paragraph 5, column A of the compilation. In addition, the Working Group agreed that, within the framework of the Convention, part I will contain, in articles 1 to 6, provisions dealing with the scope of the Convention and definitions concerning migrant workers, and part II will contain, starting from article 7 provisions dealing with fundamental human rights of all migrant workers and members of their families. The scope and definitions would be examined by the Working Group after consideration and identification of basic principles, rights and freedoms in the civil, economic, social and cultural areas (proposals for definitions are included in document A/C.3/36/WG.1/WP.1). The representative of the United States expressed some reservation on the way of proceeding agreed by the Working Group. The representatives of the Netherlands and of the United States expressed doubts, in

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particular, on the postponement of the consideration of definitions to be included in part I of the Convention and on the quoting in the Convention of provisions concerning human rights from other international instruments which were not exclusively relevant to the question of migrant workers.

34. The Working Group then discussed proposals regarding articles 7, 8 and 9 of part II of the Convention and provisionally agreed on the following text for those articles:

"7. Each State Party to this Convention undertakes to respect and to ensure to all migrant workers and members of their families within its territory and subject to its jurisdiction the rights recognized in this part of the Convention without distinction of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national [ethnic] or social origin, nationality, age, property, birth, [marital] or other status.

"8. (1) Migrant workers and members of their families shall be free to leave any country, including their country of origin. This right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with other rights recognized in this part of the Convention.

"(2) Migrant workers and members of their families shall have the right at any time to re-enter their country of origin.

"9. The right to life of migrant workers and members of their families shall be protected by law [under the same conditions as for citizens of the State concerned]."

35. The question was raised whether article 7, which referred to rights to be ensured to all migrant workers and members of their families, should not be limited to part II of the Convention. The suggestion was made that this article might be reworded to provide that the rights recognized in the Convention should be granted without distinction of any kind on the grounds enumerated. Another suggestion was that the article should be placed before part II so as to make clear that whatever rights were provided for in the various parts of the Convention should be enjoyed without discrimination.

36. At the end of the discussion on the text of article 8, on a proposal made by the representative of Greece, the Working Group agreed to reconsider at a later stage the formulation of the part of that text which deals with restrictions applicable to migrant workers and members of their families in order to take fully into account some concerns expressed, during the debate, in particular by the representative of Morocco. The Working Group agreed also that it was possible, in the light of the discussion which had taken place on article 8, to give a definition of the term "country of origin" contained in that article. The definition, which reflected the proposal for article 6 (b) contained in column C of document A/C.3/36/WG.1/WP.1, is the following: "The term 'country of origin' means

the country of which the migrant worker and the members of his family are nationals". The Working Group agreed that the definition of "country of origin" would be inserted in part I of the Convention when other definitions concerning migrant workers and members of their families are examined.

37. At its 8th meeting, on 29 October 1981, the Working Group continued its discussion on proposals concerning provisions dealing with fundamental human rights of all migrant workers and members of their families and provisionally agreed on the following text for articles 10 and 11 of part II of the Convention:

"10. Migrant workers and members of their families shall not be subject to torture or to cruel, inhuman or degrading treatment or punishment.

"11. (1) Migrant workers and members of their families shall not be held in slavery of servitude.

"(2) Migrant workers and members of their families shall not be required to perform forced or compulsory labour.

"(3) Paragraph (2) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

"(4) For the purpose of this article the term 'forced or compulsory labour' shall not include:

"(a) Any work or service, not referred to in paragraph (3), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

"(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community [in cases provided for by law];

"(c) Any work or service which forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned."

38. The Working Group also discussed a text for article 12 of part II of the Convention on the basis of the proposal which was contained in the suggested article II.6 of column C of document A/C.3/36/WG.1/WP.1.

39. The representative of the Ukrainian SSR proposed the following amendments to the text: in paragraphs (1) and (2), change the wording from "to have or to adopt a religion" to "to have or not to have and to adopt or not to adopt a religion"; in paragraph (3), replace the word "beliefs" with the word "convictions".

40. The representative of Morocco proposed the following amendments to the text: in paragraph (1), delete the second sentence after the words "conscience and

religion"; delete also paragraph (2) and keep paragraphs (3) and (4) as new paragraphs (2) and (3); add to paragraph 3 the following words after the words "liberty of migrant workers": "to practice their religion and".

41. The representative of Egypt proposed to postpone, until the second reading, the consideration of this article and to hold informal consultations in order to reach a compromise text.

42. On the suggestion of the Chairman, the Working Group agreed to hold informal consultations in order to reach a compromise text to be considered at its next meeting.

43. At the same meeting the Working Group provisionally agreed on the following text for article 13 of part II of the Convention:

"13. (1) Migrant workers and members of their families shall have the right to hold opinions without interference.

"(2) Migrant workers and their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas [of all kinds], regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

"(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

"(a) For respect of the rights or reputations of others;

"(b) For the protection of national security or of public order (ordre public), or of public health or morals."

44. The representative of the Netherlands objected to the placing of the words "of all kinds" in brackets, as was suggested by the representative of Argentina.

45. The Working Group provisionally agreed also on the text for articles 14 and 15 of part II of the Convention, as follows:

"14. Migrant workers and members of their families shall not be subjected to arbitrary or unlawful interference with their privacy, family, home, correspondence, or other communications nor to unlawful attacks on their honour and reputation. They shall have the right to the protection of the law against such interference or attacks.

"15. Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the country of employment (receiving country), their assets are expropriated in whole or in part, they shall have the right to just compensation."

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46. In connexion with the consideration of article 15 of the Convention, the Chairman brought to the attention of the Working Group the text for a new article which had been elaborated in informal consultations with some members of the Group. The text was the following: "The rights of migrant workers and members of their families and claims to which they have become entitled shall not be prejudiced by reason of their expulsion or departure from their receiving country". The Working Group agreed to examine that text for a new article at a later stage when other provisions relating to measures of expulsion are considered.

47. At its 9th meeting on 30 October 1981, the Working Group resumed consideration of article 12 of part II of the Convention and, taking into account the amendments proposed by Morocco and the Ukrainian SSR at its previous meeting, provisionally agreed on the following text:

"12. (1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. [This right shall include freedom to have [or not to have] or to adopt [or not to adopt] a religion or belief of their choice, and freedom whether individually or in community with others and in public or private, to manifest their religion or beliefs in worship, observance, practice and teaching.]

"[(2) Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have [or not to have] or to adopt [or not to adopt] a religion or beliefs of their choice.]

"(3) Freedom to manifest one's religion or [beliefs] [convictions] may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

"(4) The States Parties to this Convention undertake to have respect for the liberty of migrant workers [to practice their religion and] to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions."

48. During the consideration by the Working Group of article 12, the representative of the Philippines expressed his concern for the situation of "ministers" of different creeds who practice and profess their religion while they are working in a foreign country and wished that the Working Group would take into account that matter in the future.

49. In connexion with the consideration of article 12 of the Convention, the Chairman brought to the attention of the Working Group an alternative text for that article which might be taken into consideration by the Group in a future second reading of its provisions. The text was the following:

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"12. (1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion; (2) Receiving countries pledge to respect the exercise of those freedoms without coercion, especially the freedom of migrant workers and members of their families to practise their religion and to ensure, as appropriate, the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions; (3) Freedom of thought, conscience and religion of migrant workers and members of their families may be subject only to such limitation as it is prescribed by law."

50. At the same meeting, the Working Group considered article 16 of part II of the Convention. It provisionally agreed on a text for that article on the basis of proposals contained in the suggested article II.10 of column C of document A/C.3/36/WG.1/WP.1, on the basis of proposals elaborated in informal consultations among members of the Group and taking into account various amendments proposed during the meeting by the representatives of Argentina and the United States. The text was the following:

"16. (1) Migrant workers and members of their families shall have the right to liberty and security of person;

"(2) Migrant workers and members of their families shall be entitled to [normal police] protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions;

"(3) Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law;

"(4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention, nor be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law;

"(5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest and, so far as possible in a language which they understand, of the reasons for their arrest and shall be promptly informed in a language which they understand of any charges against them;

"(6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release [in accordance with the penal procedure of the receiving State]. [It shall not be the general rule that while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for the execution of the judgement.]

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"(7) (a) In the case of arrest or detention of a migrant worker or a member of his family [on a criminal charge], if he so requests, the diplomatic or consular authorities of his country of origin or representing the interests of that country shall be informed without delay of the arrest or detention and of the reasons therefor. Any communication addressed to the said authorities by the person concerned shall also be forwarded to them without delay;

"(b) The person concerned shall be informed without delay of the above-mentioned rights;

"(c) The said diplomatic or consular authorities shall have the right to visit the person concerned during any period of detention [on a criminal charge] or imprisonment, to converse and correspond with him, and to arrange for his legal representation [in accordance with the terms of the Vienna Convention relating to consular relations].

"(8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. [In taking such proceedings, they shall have free assistance of an interpreter if they cannot understand or speak the language used.]

"(9) Migrant workers and members of their families who have been victims of unlawful arrest or detention [shall have an enforceable right to compensation.] [shall have the right to bring an action for compensation] [for damages caused] [subject to domestic legislation]."

51. In connexion with the consideration of article 16 of the Convention, the Chairman brought to the attention of the Working Group the text for a new paragraph which had been elaborated in informal consultations with some members of the Group. The text was the following: "Consular authorities of the country of origin or those representing the interest of that country shall be notified of any decision to expel a migrant worker or a member of his family at least 48 hours before the expulsion is to take effect". On the proposal of the representative of Italy, supported by the representatives of Argentina and Algeria, the Working Group agreed to examine that text for a new paragraph at a later stage when other provisions relating to measures of expulsion are considered.

52. At the same meeting, the representative of Yugoslavia introduced proposals relating to the part of the Convention dealing with economic, social and cultural rights of migrant workers and members of their families to be considered by the Working Group at its future sessions. She explained that those advance proposals, reflecting specific concerns of her delegation, were submitted at an early stage so as to be incorporated in the proposed framework of the Convention contained in document A/36/378, annex IX, section III, paragraphs 3 and 5 and section V, paragraph 6. The proposals were the following:

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"(1) Basic rights of authorized documented migrant workers: protection of family rights

"The children belonging to the second and third generation of migrant workers shall have equal rights with the children of domestic workers as to the access at all levels to various institutions of education. They will also be provided with supplementary education in their national group of subjects in their mother tongue.

"(2) Basic rights of authorized documented migrant workers: specific cultural, social and economic rights

"Migrant workers and their families shall be allowed to establish associations and clubs in the State of destination, which will help ensure preservation of their cultural identity, as well as further strengthen their bonds with the State of origin.

"(3) Promotion of sound and equitable conditions for international migrations: voluntary return of authorized/documentated migrant workers

"The State of origin as well as the State of destination shall respect the principle of voluntary return of migrant workers to the State of origin. These and related questions should be regulated on the bilateral and/or multilateral basis in order to create conditions, through economic, technical and other forms of co-operation, for speedier increase in employment rates in the States of origin."

53. The representative of Sweden also made an introductory statement on document A/C.3/36/WG.1/CRP.1/Add.1 on behalf of the co-sponsors of that document, Finland, Italy, Norway, Portugal, Spain and Sweden. The document contained suggestions intended to complete part II of the Convention with particular reference to economic, social and cultural rights of all migrant workers and members of their families. Suggestions concerning the remaining parts of the Convention, as outlined in annex IX to document A/36/378, would be submitted as soon as possible.

54. At its 10th meeting, on 2 November 1981, the Working Group considered article 17 of part II of the Convention and provisionally agreed on the following text, on the understanding that the two proposals in brackets for paragraph (3) of article 17 would form the basis for the elaboration of one text at a later stage:

"17. (1) Migrant workers and members of their family who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

"(2) If they are detained in custody while awaiting trial, they shall, [whenever possible,] [save in exceptional circumstances,] be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

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"[(3) Any migrant worker or a member of his/her family who is detained in a country of transit or in a receiving country [pending trial on a charge of] [for] violation of provisions relating to migration shall be housed, in so far as practicable, separately from persons in detention pending trial for other offences.]

[(3) 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 [under judicial control] separate from the prisons or other centres of detention or imprisonment for offenders or criminals.]

"(4) During any period of imprisonment in pursuance of a sentence imposed by a court of law, the treatment of a migrant worker or a member of his family shall be aimed at his reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

"[(5) During detention or imprisonment, migrant workers or members of their families shall enjoy the right to visits by members of their family.]

"[(6) 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.]

"[(7) 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.]

"[(8) All costs arising from the detention of migrant workers or their families shall be borne by the competent authorities of the State of destination.]"

55. The representative of the Netherlands expressed reservation with regard to the text of paragraph (4) of article 17, since, in his view, the formulation of the text of that paragraph could imply a legal recognition or regularization of the status of migrant workers, while part II of the Convention was dealing with fundamental human rights of all migrant workers and members of their families regardless of their status. He further stressed that no provision in part II of the Convention should seek to regularize the status of illegal migrant workers or of illegal members of their families. The representative of the United States expressed reservation on the formulation of the text of paragraph (5) of article 17 and pointed out that, in a further consideration by the Working Group of that paragraph, distinction could be made, in two separate subparagraphs, between the rights to be enjoyed by a convicted person and those to be enjoyed by a detained person.

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56. At the same meeting, the Working Group also provisionally agreed on the text of article 18, paragraphs 1 and 2 of part II of the Convention, as follows:

"18. [(1) Migrant workers and members of their families shall have the right to equality with citizens of the State concerned as regards access to treatment by the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.]

"(2) Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

57. The representatives of the Netherlands and of the United States expressed reservation, with regard to the formulation of paragraph (1) of article 18, since, in their view, the text could imply a legal recognition or regularization of the status of migrant workers, while part II of the Convention was dealing with fundamental human rights of all migrant workers and members of their families regardless of their status. The representative of the Netherlands further stressed that no provision in part II of the Convention should seek to regularize the status of illegal migrant workers or of illegal members of their families.

58. At its 11th meeting, on 3 November 1981, the Working Group continued consideration of article 18 of part II of the Convention and provisionally agreed on the following text for that article:

"18. ...

"(3) In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

"(a) To be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;

"(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

"(c) To be tried without undue delay;

"(d) To be tried in their presence, and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it;

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"(e) To examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

"(f) To have the free assistance of a [qualified] interpreter if they cannot understand or speak the language used in the proceedings;

"(g) Not to be compelled to testify against themselves or to confess guilt;

"(4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation;

"(5) Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law;

"(6) When migrant workers or members of their families have by a final decision been convicted of a criminal offence and when subsequently their conviction has been reversed or they have been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the persons who have suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to them;

"(7) Migrant workers and members of their families shall not be liable to be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

59. In connexion with the consideration of subparagraph (3) (g) of article 18, the representative of Morocco pointed out that that subparagraph would be better placed in article 18 as paragraph (3) (a) and that the possibility of changing the order of the paragraphs of article 18 should be considered by the Working Group in a second reading of the Convention.

60. On the proposal of several delegations, the Working Group then agreed to examine proposals relating to article 22 of part II of the Convention before considering proposals for articles 19, 20 and 21 of the same part on the understanding that the proposals for articles 19, 20 and 21 would be discussed immediately after the consideration of article 22.

61. The Working Group provisionally agreed on the following text of paragraphs 1, 2 and 3 of article 22, on the understanding that the two proposals in brackets for paragraph (1) of article 22, the first being the one suggested in the proposed article II.16 (1) in column C of document A/C.3/36/WG.1/WP.1 and the second a new text proposed by the representative of Greece, would form the basis for the elaboration of one text at a later stage:

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"[22. (1) Migrant workers and members of their families shall not be subject to measures of [collective] [mass] expulsion.]"

"[(2) Migrant workers and members of their families may be expelled from the territory of a State Party to this convention only in pursuance of a judicial or administrative decision reached or dictated in accordance with law and stating the reasons for the decision.]"

"[(3) The decision shall be communicated to them in writing.]"

62. In connexion with the consideration of paragraph 1 of article 22, the representative of the Netherlands expressed reservation with regard to the formulation of the text provisionally agreed and in particular to the terms "collective expulsion" which required further clarification in view of a legal definition. The representative of the United States expressed reservation with regard to the placing of article 22 in part II of the Convention before the consideration by the Working Group of part I dealing with definitions. He further pointed out that article 22 should only appear in the part of the Convention dealing with illegal migration and should distinguish between legal and illegal migrant workers.

63. At its 12th meeting, on 5 November 1981, the Working Group concluded its consideration of article 22 of part II of the Convention and agreed to pursue the study of the following paragraphs for that article:

"22. ...

"[(4) Except where the decision is pronounced by a judicial authority the person concerned shall have the right to appeal [to press its examination by a higher authority] against it. If the [appeal] [review] is not to be examined by a judicial authority, shall stay the execution of the decision except where the reasons stated therefor involve substantial requirements of national security or public order. If a decision which has been the subject of such immediate execution is subsequently annulled, the person concerned shall have the right to compensation according to law.]"

"[(5) In case of expulsion, the person concerned shall be allowed a reasonable opportunity to obtain the settlement of any claims for wages and other entitlements due to him by his employer, to settle any contractual liabilities, [and where this appears necessary for reasons of personal security, to seek entry to a country other than his country of origin.] Account shall also be taken of the person's family circumstances.]"

"[(6) Expulsion or departure from the receiving country shall not in itself prejudice any rights acquired under the law of a migrant worker or a member of his/her family.]"

"[(1) Each case of expulsion shall be examined and decided individually.]"

"[(7) 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.]]"

64. In connexion with the discussion of a text for article 22, several delegations were of the opinion that the Convention should contain an appropriate provision in the question of non-admittance of undocumented migrant workers at ports of entry in countries of destination and that this question should be taken up by the Working Group at an appropriate stage.

65. In connexion, in particular, with the discussion of paragraph (4) of article 22, the representative of Mexico, supported by the representative of Greece, pointed out that the Working Group could take into account, in a second reading of that paragraph, other formulations of the text such as that suggested in the proposal for article 47, contained in column A of document A/C.3/36/WG.1/WP.1. The text of the proposal was the following:

"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."

66. During the discussion of paragraph (5) of article 22, the representative of Greece pointed out that, in a second reading, the Working Group could consider a new formulation for that paragraph to the effect that migrant workers concerned and members of their families would be allowed an opportunity to settle their personal affairs before actual departure for expulsion.

67. With regard to paragraph (6) of article 22, the representative of the United States expressed the view that a different formulation could be found by the Working Group at a later stage. He also expressed serious reservations on article 22 and supported various proposals to place each paragraph in square brackets.

68. With regard to paragraph (7) of article 22, several delegations expressed the opinion that the provisions of that paragraph could be reformulated and included, in a second reading, in that part of the Convention dealing with measures for co-operation between countries of origin and countries of destination in order to solve the problems linked with voluntary return of migrant workers and their families in a regular or irregular situation.

69. The representative of Morocco also observed that a provision could be inserted in the Convention to the effect that in case of "voluntary exit" of migrant workers legally residing in their territory, it would be desirable that the receiving States concerned should assist in the process of reinstatement of such migrant workers in their country of origin.

70. Some delegations expressed opposition to an absolute requirement that the State of destination bear all costs of expulsion or deportation and to the implied absolute prohibition against the possibility of such costs being paid partially or totally by the individuals involved. The representative of the United States also opposed the present formulation of the second part of paragraph 7 concerning possible pressure by State authorities to participate in a "voluntary exit" procedure, since, among other things, it fails to define the term "voluntary exit", fails to make clear whether such programmes apply to documented or undocumented workers, and does not deal with all sides of the question. Some delegations said that this provision should deal with summary procedures in certain countries where migrant workers legally residing and legally working are suddenly pressured to leave. Consequently, the United States representative asked the co-sponsors of the proposed article 49 in column A of document A/C.3/36/WG.1/WP.1 incorporated in paragraph 7 of article 22, namely the delegations of Algeria, Barbados, Egypt, Mexico, Pakistan, Turkey and Yugoslavia, to define "voluntary exit" in that sense either in this paragraph or in a separate provision on the subject.

71. The representative of Benin expressed the view that a separate paragraph should be inserted in article 22, after paragraph 7. The paragraph would provide that, in case of voluntary exit, the migrant worker should provide proof of his capacity or incapacity to pay the cost of his voluntary exit in order to determine his real need of financial support by the receiving State to return to his country of origin.

72. At its 13th meeting, on the same day, the Working Group considered proposals relating to articles 19, 20 and 21 of part II of the Convention and provisionally agreed on the following text for those articles:

"19. (1) Migrant workers and members of their families shall not be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when the criminal offence was committed [nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed]. If, subsequent to the commission of any offence, provision is made by law for the imposition of a lighter penalty they shall benefit thereby.

"[(2) In accordance with the principle of proportionality of penal sanctions, courts shall have regard, in imposing any sentence for criminal offences committed by migrant workers or members of their families, to any incidental sanctions or consequences affecting their right of residence or work, including expulsion.]

"(3) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to [the general principle of law recognized by the community of nations.] [the legislation of the receiving State.]

"[20. Migrant workers and members of their families shall not be imprisoned, deprived of their authorization of residence or work permit, or expelled merely on the ground of [inability] [failure] to meet a contractual obligation.]

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"21. It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate identity documents, documents authorizing entry to or stay, residence or establishment in the national territory, or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. [It shall be a [serious] offence, and punishable accordingly, unlawfully to confiscate such documents or to destroy or attempt to destroy them.]"

73. During the discussion of article 19, paragraph (1), the representative of the USSR was of the view that the expression "under national or international law" could be better reformulated in the expression "under the law". The representative of the United States indicated that the language of article 15 of the International Covenant on Civil and Political Rights should not be altered, and so "under national or international law" should be retained and "nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed" should be added. With regard to paragraph (2) of the same article, the representative of the Netherlands expressed some doubts on its text with regard, in particular, to the wording "their right of residence or work" which referred to the entitlement to those rights by migrant workers in a receiving country. As to the question of whether this paragraph is rightly included in part II, which covers all migrant workers, including illegal migrant workers, the representative of the Netherlands objected to the recognition of the right of residence or the right to work, even indirectly, to illegal migrant workers. The representative of the United States also expressed the view that the provision contained in that paragraph might constitute an infringement of the discretion of the court in some legal systems and might inject a discriminatory factor in sentencing based solely on immigration status of migrant workers. In connexion with the amendment proposed by the representative of the USSR to the last sentence of paragraph (3) of article 19, "the legislation of the receiving State", the representative of the Netherlands recalled that the text of that paragraph was taken from article 15, paragraph 2 of the International Covenant on Civil and Political Rights, and objected to the alteration of the texts of provisions of the Covenant when they are inserted in the Convention under consideration. The representative of the United States supported the Netherlands position.

74. With regard to article 20 of the Convention, the representatives of Argentina, Brazil and the United States, referred to the possibility of reformulating this article, in a second reading of the Working Group. The article should make a distinction between persons who do not comply with contractual obligations for reasons attributable to themselves and those who fail to do so for reasons beyond their control. The representative of Brazil stressed, in particular, that according to various legal systems, default of a contractual obligation might result, in some cases, in the imprisonment of the defaulter.

75. At the same meeting, the Working Group also provisionally agreed on the following text for article 23 of part II of the Convention:

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"23. (1) Migrant workers and members of their families shall have the right to seek consular [and diplomatic] protection [and appropriate assistance] from the authorities of their country of origin or those representing the interests of that country [and to receive from them legal advice and counsel] whenever the rights recognized in this Convention or their rights under the legislation of the country of employment [receiving country] are impaired.

"[(2) The consular [or diplomatic] authorities of the country of origin or those representing the interests of that country shall be notified of any decision to expel a migrant worker or a member of his/her family [legally present in the State of destination] at least forty-eight hours before the expulsion is to take effect.]"

76. With regard to article 23, and in particular its paragraph 1, the representatives of Argentina and the United States pointed out that those provisions should be applicable to migrant workers and members of their families who already find themselves in the country of destination, but they should not be applicable to persons who have not yet entered the country concerned or who have been turned back at ports of entry, or, as the representative of the United States pointed out, they should not necessarily apply to all those who are apprehended as illegal migrants shortly after crossing the border of the country concerned.

77. At its 14th meeting, on 6 November 1981, the Working Group agreed to postpone the remaining proposals for articles of the Convention contained in document A/C.3/36/WG.1/WP.1 to its next session and to examine them in connexion with the consideration of other parts of the Convention.

78. The Working Group thus concluded its work for the present session during which it completed the first reading of the text of the preamble, paragraphs 1 to 21, and of part II of the Convention, articles 7 to 23 (see text in part II below).

79. At its 15th and 16th meetings on 17 and 20 November 1981, the Working Group discussed its draft report on the work of this session and adopted it as the report of the Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families to the Third Committee of the General Assembly at its thirty-sixth session.

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II. TEXT OF THE PREAMBLE AND ARTICLES OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES WHICH THE WORKING GROUP PROVISIONALLY AGREED DURING THE FIRST READING 2/

Preamble

The States Parties to this Convention,

(1) [Reaffirming] [Taking into account] the [permanent validity] [the importance] of the principles [and standards] [norms] embodied in the basic instruments 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, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination Against Women,

(2) [Reaffirming also] [Taking into account] the principles [and standards] [set forth in the relevant instruments] elaborated within the framework of the International Labour Organisation, especially the Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151),

(3) Reaffirming the importance of 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, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

(5) Recognizing the importance of the work carried out in connexion with [migrant labour] [migrant workers and their families] in various organs of the United Nations system, in particular in the Commission on Human Rights, the Commission for Social Development, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, and in various regional organizations.

2/ Square brackets indicate language upon which the Working Group did not reach agreement.

/...

[(6) Recognizing that the principal objective of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, [that the ILO has thus been vested with special authority and responsibility to deal with the subject of migrant workers and that the ILO possesses unique competence, expertise, and experience in migrant worker matters] [and that the ILO has made a significant contribution to the promotion of the interests of migrant worker workers,]]

(7) Recognizing the progress made by certain countries on a regional or bilateral basis, as well as the importance and usefulness of bilateral and multilateral agreements for the protection of the rights of migrant workers and their families,

(8) 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,

[(9) Aware of the [positive] impact that the 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 the new international economic order,]

[(10) 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,]

(11) Considering the situation of [vulnerability] in which migrant workers find themselves in the receiving societies [for reasons relating, among other things, to their absence from their country of origin and to the difficulties of their [insertion] [adaptation] [presence] in the receiving society] [for various reasons],

[(12) 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,]

[(13) Bearing [also] 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,]

(14) Recognizing the necessity to promote a balanced international economic development in order to minimize the [need for and] problems linked with international migration,

[(6) Recognizing the importance of the International Labour Organisation in the defence of the interests of migrant workers,]

(15) Convinced that the status and fundamental rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

(16) Taking into account that often migration is the cause of serious problems for the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

[(17) 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,]

[(17) 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,]

(18) Considering that in most cases workers who are undocumented or in an irregular situation are employed under worse conditions of work than other workers including migrant workers in a regular situation, and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

[(19) Considering that the widest recognition of the rights of all migrant workers and the effective safeguarding of these rights will accordingly tend to discourage the seeking of migrant workers who are undocumented or in an irregular situation and to contribute to a reduction in irregular migration flows,]

[(20) Considering however that, in order to discourage prospective migrants for employment from respecting the normal procedures established by the competent authorities of the country concerning the recognition of certain rights ought to be limited to migrant workers in a regular situation, including those whose situation has been regularized,]

(21) Convinced therefore of the need to bring forth the international protection of the rights of all migrant workers and their families reaffirming and establishing basic norms in a comprehensive Convention which could be applied universally,

Have agreed on the following articles:

PART I

Scope and definitions

Articles 1 to 6 (text to be inserted at a later stage)

PART II

Fundamental human rights of all migrant workers  
and members of their families

Article 7. Each State Party to this Convention undertakes to respect and to ensure to all migrant workers and members of their families within its territory and subject to its jurisdiction the rights recognized in this part of the Convention without distinction of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national [ethnic] or social origin, nationality, age, property, birth [marital] or other status.

Article 8. (1) Migrant workers and members of their families shall be free to leave any country, including their country of origin. This right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with other rights recognized in this part of the Convention.

(2) Migrant workers and members of their families shall have the right at any time to re-enter their country of origin.

Article 9. The right to life of migrant workers and members of their families shall be protected by law [under the same conditions as for citizens of the State concerned].

Article 10. Migrant workers and members of their families shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11. (1) Migrant workers and members of their families shall not be held in slavery or servitude.

(2) Migrant workers and members of their families shall not be required to perform forced or compulsory labour.

(3) Paragraph (2) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(4) For the purpose of this article the term "forced or compulsory labour" shall not include:

(a) Any work or service, not referred to in paragraph (3), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community [in cases provided for by law];

/...

(c) Any work or service which forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12. (1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. [This right shall include freedom to have [or not to have] or to adopt [or not to adopt] a religion or belief of their choice, and freedom whether individually or in community with others and in public or private, to manifest their religion or beliefs in worship, observance, practice and teaching.]

[(2) Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have [or not to have] or to adopt [or not to adopt] a religion or beliefs of their choice.]

(3) Freedom to manifest one's religion or [beliefs] [convictions] may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(4) The States Parties to this Convention undertake to have respect for the liberty of migrant workers [to practice their religion and] to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions.

Article 13. (1) Migrant workers and members of their families shall have the right to hold opinions without interference.

(2) Migrant workers and their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas [of all kinds], regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14. Migrant workers and members of their families shall not be subjected to arbitrary or unlawful interference with their privacy, family, home, correspondence, or other communications nor to unlawful attacks on their honour and reputation. They shall have the right to the protection of the law against such interference or attacks.

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Article 15. Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the country of employment (receiving country), their assets are expropriated in whole or in part, they shall have the right to just compensation.

Article 16. (1) Migrant workers and members of their families shall have the right to liberty and security of person.

(2) Migrant workers and members of their families shall be entitled to [normal police] protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

(3) Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

(4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention, nor be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

(5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest and, so far as possible in a language which they understand, of the reasons for their arrest and shall be promptly informed in a language which they understand of any charges against them.

(6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release [in accordance with the penal procedure of the receiving State]. [It shall not be the general rule that while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.]

(7) (a) In the case of arrest or detention or a migrant worker or a member of his family [on a criminal charge], if he so requests, the diplomat or consular authorities of his country of origin, or representing the interests of that country, shall be informed without delay of the arrest or detention and of the reasons therefore. Any communication addressed to the said authorities by the person concerned shall also be forwarded to them without delay;

(b) The person concerned shall be informed without delay of the above-mentioned rights;

(c) The said diplomatic or consular authorities shall have the right to visit the person concerned during any period of detention [on a criminal charge] or imprisonment, to converse and correspond with him and to arrange for his legal

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representation [in accordance with the terms of the Vienna Convention relating to consular relations].

(8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. [In taking such proceedings, they shall have the free assistance of an interpreter if they cannot understand or speak the language used.]

(9) Migrant workers and members of their families who have been victims of unlawful arrest or detention [shall have an enforceable right to compensation] [shall have the right to bring an action for compensation] [for damages caused] [subject to domestic legislation].

Article 17. (1) Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

(2) If they are detained in custody while awaiting trial, they shall, [whenever possible,] [save in exceptional circumstances,] be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

[(3) Any migrant worker or a member of his/her family who is detained in a country of transit or in a receiving country [pending trial on a charge of] [for] violation of provisions relating to migration, shall be housed, in so far as practicable, separately from persons in detention pending trial for other offences.]

[(3) 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 [under judicial control] separate from the prisons or other centres of detention or imprisonment for offenders or criminals.]

(4) During any period of imprisonment in pursuance of a sentence imposed by a court of law, the treatment of a migrant worker or a member of his family shall be aimed at his reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

[(5) During detention or imprisonment, migrant workers or members of their families shall enjoy the right to visits by members of their family.]

[(6) 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.]

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[(7) 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.]

[(8) All costs arising from the detention of migrant workers or their families shall be borne by the competent authorities of the State of destination.]

Article 18. [(1) Migrant workers and members of their families shall have the right to equality with citizens of the State concerned as regards access to and treatment by the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.]

(2) Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(3) In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(a) To be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence, and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of a [qualified] interpreter if they cannot understand or speak the language used in the proceedings;

(g) Not to be compelled to testify against themselves or to confess guilt.

(4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

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(5) Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

(6) When migrant workers or members of their families have by a final decision been convicted of a criminal offence and when subsequently their conviction has been reversed or they have been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the persons who have suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to them.

(7) Migrant workers and members of their families shall not be liable to be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 19. (1) Migrant workers and members of their families shall not be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when the criminal offence was committed [nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed]. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty they shall benefit thereby.

[(2) In accordance with the principle of proportionality of penal sanctions, courts shall have regard, in imposing any sentence for criminal offences committed by migrant workers or members of their families, to any incidental sanctions or consequences affecting their right of residence or work including expulsion.]

(3) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to [the general principle of law recognized by the community of nations] [the legislation of the receiving State].

Article 20. Migrant workers and members of their families shall not be imprisoned, deprived of their authorization of residence or work permit, or expelled merely on the ground of [inability] [failure] to meet a contractual obligation.]

Article 21. It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate identity documents, documents authorizing entry to or stay, residence or establishment in the national territory, or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. [It shall be a [serious] offence, and punishable accordingly, unlawfully to confiscate such documents or to destroy or attempt to destroy them.]

Article 22. (1) Migrant workers and members of their families shall not be subject to measures of [collective] [mass] expulsion.]

"[(1) Each case of expulsion be examined and decided individually.]"

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[(2) Migrant workers and members of their families may be expelled from the territory of a State Party to this Convention only in pursuance of a judicial or administrative decision reached or dictated in accordance with law and stating the reasons for the decision.]

[(3) The decision shall be communicated to them in writing.]

[(4) Except where the decision is pronounced by a judicial authority the person concerned shall have the right to appeal [to press its examination by a higher authority] against it. If the [appeal] [review] is not to be examined by a judicial authority, shall stay the execution of the decision except where the reasons stated therefore involve substantial requirements of national security or public order. If a decision which has been the subject of such immediate execution is subsequently annulled, the person concerned shall have the right to compensation according to law.]

[(5) In case of expulsion, the person concerned shall be allowed a reasonable opportunity to obtain the settlement of any claims for wages and other entitlements due to him by his employer, to settle any contractual liabilities, [and where this appears necessary for reasons of personal security, to seek entry to a country other than his country of origin.] Account shall also be taken of the person's family circumstances.]

[(6) Expulsion or departure from the receiving country shall not in itself prejudice any rights acquired under the law of a migrant worker or a member of his/her family.]

[(7) 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.]]

Article 23. (1) Migrant workers and members of their families shall have the right to seek consular [and diplomatic] protection [and appropriate assistance] from the authorities of their country or origin or those representing the interests of that country [and to receive from them legal advice and counsel] whenever the rights recognized in this Convention or their rights under the legislation of the country of employment [receiving country] are impaired.

[(2) The consular [or diplomatic] authorities of the country of origin or those representing the interests of that country shall be notified of any decision to expell a migrant worker or a member of his/her family [legally present in the State of destination] at least forty-eight hours before the expulsion is to take effect.]