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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 on the Elaboration of an
International Convention on the Protection of the Rights of All
Migrant Workers and Their Families on its intersessional meetings
from 10 to 21 May 1982

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

INTRODUCTION

1. The Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families, open to all Member States, was established under General Assembly resolution 34/172 of 17 December 1979.
2. Before the intersessional meetings held in May 1982, the Working Group held the following sessions at United Nations Headquarters: the first session from 8 October to 19 November 1980 during the thirty-fifth session of the General Assembly, an intersessional meeting from 11 to 22 May 1981, and another session from 12 October to 20 November 1981 during the thirty-sixth session of the General Assembly.
3. By its resolution 36/160 of 16 December 1981, the General Assembly, inter alia, took note of the report of the open-ended Working Group and expressed its satisfaction with the substantial progress that the Working Group had so far made in the accomplishment of its mandate; decided that, in order to enable the Working Group to complete its task as soon as possible, the Working Group should hold again

intersessional meetings of two weeks duration in New York, in May 1982, immediately after the first regular session of the Economic and Social Council; invited the Secretary-General to transmit to Governments the report of the Working Group so as to allow the members of the Working Group to continue its task during the intersessional meetings to be held in May 1982, as well as to transmit the results obtained in these meetings in order that the General Assembly may consider them during its thirty-seventh session; invited also the Secretary-General to transmit the above-mentioned documents to the competent organs of the United Nations system and to international organizations concerned for their information, so as to enable them to continue their co-operation with the Working Group; and decided that the Working Group should meet during the thirty-seventh session of the General Assembly to continue and, if possible, to complete the elaboration of an international convention on the protection of the rights of all migrant workers and their families.

4. In pursuance of General Assembly resolution 36/160, the Working Group held its intersessional meetings at United Nations Headquarters from 10 to 21 May 1982, under the Chairmanship of Mr. Antonio González de León (Mexico). It held 20 meetings with the participation of delegations from all regions. The observers of the following international organizations or agencies also took part in the meetings of the Working Group: International Labour Organisation, United Nations Educational, Scientific and Cultural Organization, United Nations High Commissioner for Refugees and the United Nations Children's Fund.

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

(a) Report 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 to the Third Committee of the General Assembly at its thirty-sixth session (A/C.3/36/10);

(b) Compilation of proposals made by members of the Working Group (A/C.3/36/WG.1/WP.1);

(c) Suggestions submitted by Finland, Italy, Norway, Portugal, Spain and Sweden (A/C.3/36/WG.1/CRP.1 and Adds. 1-3 and Add.1/Rev.1-3);

(d) First report of the Chairman of the Open-ended Working Group (A/C.3/35/13 and Corr.1);

(e) Letter dated 25 May 1981 from the Chairman of the Open-ended Working Group on the drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families to the Secretary-General (A/36/378);

(f) 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 meetings (A/36/383 and annexes).

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

6. 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 has not reached agreement on the proposed language, which therefore remains between square brackets.

7. It may be recalled that, at its meetings held during the thirty-sixth session of the General Assembly, the Working Group had concluded its first reading of the preamble of the draft Convention. The Working Group had agreed that part I of the Convention (arts. 1-6, relating to scope and definitions) would be examined after consideration and identification of basic human rights and fundamental freedoms. During those meetings the Working Group also began its first reading of the operative part of the Convention by examining the proposals for general principles concerning fundamental human rights applicable to all migrant workers and their families regardless of their status (part II of the Convention), and provisionally agreed to certain draft provisions in part II up to and including article 23. The preliminary texts of both the preamble and the articles of part II appear in chapter II of document A/C.3/36/10.

8. At its 1st intersessional meeting on 10 May 1982, the Working Group continued its consideration of the draft Convention by resuming its first reading of part II on the basis of the remaining proposals contained in document A/C.3/36/WG.1/WP.1 and of the further suggestions submitted by Finland, Italy, Norway, Portugal, Spain and Sweden (A/C.3/36/WG.1/CRP.1/Add.1), as revised by the sponsors (A/C.3/36/WG.1/CRP.1/Add.1/Rev.1). The representative of Sweden on behalf of the co-sponsors introduced the new proposed articles and said that the application of certain rights to all migrant workers would discourage the hiring of undocumented workers but it would not imply the legalization or regularization of such workers. It was understood that, since this was the first reading of the draft Convention, any proposals submitted to the Working Group would remain before the Group, unless withdrawn by the sponsors, until a final text was agreed upon at a later stage.

9. At the same meeting the Working Group agreed that, after completion of the first reading of part II and before entering into an examination of part III, it would deal with part I of the draft Convention concerning its scope and definitions.

A. Part II: Fundamental human rights of all migrant workers and members of their families

Article 24

10. At its 1st meeting on 10 May 1982, the Working Group considered a text for article 24 on the basis of the proposed article II.18 contained in document A/C.3/36/WG.1/CRP.1/Add.1 and provisionally agreed to the following formulation:

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"24. Every migrant worker and every member of a migrant worker's family shall have the right to recognition everywhere as a person before the law."

Article 25

11. At its 1st and 2nd meetings, on 10 May 1982, the Working Group discussed a text for article 25 on the basis of the proposed article II.19 contained in document A/C.3/36/WG.1/CRP.1/Add.1, which read as follows:

"II.19 (1) All migrant workers shall enjoy equality of treatment with nationals of the receiving State in respect of remuneration, other terms of employment and conditions of work.

"(2) Any clause in an individual contract of employment, collective agreement or arbitration award which establishes less favourable remuneration, terms of employment or conditions of work for migrant workers than for nationals of the receiving State shall be null and void.

"(3) The States Parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights arising out of employment by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner, by reason of any such irregularity."

12. Several delegations discussed the convenience of including this article in part II, but after the debate the Working Group decided to retain it. On the proposal of the representative of the United States, the Working Group agreed to hold informal consultations in order to reach a compromise text to be considered at a later meeting.

13. On 14 May 1982, the representatives of Finland, Italy, Norway, Portugal, Spain and Sweden, in the light of informal consultations with the delegations of India, Mexico, Turkey and other delegations, submitted a revised version of their proposal for article 25 concerning remuneration and other "working conditions" (A/C.3/WG.1/CRP.1/Add.1/Rev.3). The revised proposal read as follows:

"25. (1) All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the receiving State in respect of remuneration and other conditions of work.

"(2) It shall not be lawful to derogate from the principle of equality of treatment referred to in paragraph 1 above.

"(3) The States Parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner, by reason of any such irregularity."

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14. Some delegations felt that the text was too vague and proposed that "working conditions" be specifically defined in paragraph 1. The representative of the United States felt that the text was too sweeping and proposed that the term "working conditions" in paragraph 1 be defined by a specific list of conditions which would constitute a minimum standard for States parties, with each State free to include other conditions unilaterally. Some other representatives felt that the inclusion of a list of matters covered by that term in the body of the article was not advisable as it was implicit that the concept of "working conditions" was defined at the national level and was subject to evolution. Still other delegations agreed that the article should contain a list of working conditions, such a list to be, however, illustrative, leaving room for variations according to national law. An alternative view expressed by some speakers was that an understanding concerning "working conditions" could be reflected in the report of the Working Group and in part I of the Convention rather than in the article under consideration.

15. After further informal consultations the Working Group provisionally agreed at first reading on the following text for article 25:

"25. (1) All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the receiving State in respect of remuneration and:

"(a) Other conditions of work, that is to say overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, and any other conditions of work which, according to national laws or practice is covered by this term;

"(b) Other terms of employment, that is to say minimum age of employment, restriction on home work and any other matter which, according to national laws and practice is considered a term of employment;

"(2) It shall not be lawful to derogate from the principle of equality of treatment referred to in paragraph 1 above.

"(3) The States Parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner, by reason of any such irregularity."

16. The representative of Egypt stated that he had reservations as to the appropriateness of the terms "irregularity in their stay or employment" in paragraph 3, since "irregularity" does not cover specifically "illegality". With respect to the observations of the delegation of Egypt, the representative of the Netherlands stated that those reservations, which he shared, stressed once more, in his view, the need for definitions which should be taken up before engaging in a consideration of part III.

Article 26

17. At its 2nd meeting, on 10 May 1982, the Working Group considered a text for article 26 on the basis of the proposed article II.20 contained in document A/C.3/36/WG.1/CRP.1/Add.1, which read as follows:

"II.20 (1) The States Parties to the present Convention recognize the right of all migrant workers and members of their families:

"(a) To take part in peaceful meetings and activities of trade unions and of other associations established for the protection of economic, social, cultural and similar interests;

"(b) To join any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

"(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

"(2) No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public), or the protection of the rights and freedoms of others."

18. The representative of Italy, on behalf of the co-sponsors, explained that article 26 should be read with the corresponding articles in part III. Several delegations questioned the right of undocumented workers to join trade unions and associations and asked the representative of the ILO to explain the position of the unions towards the undocumented workers. The representative of the ILO said that the position of the unions was diverse in Europe and the United States but that article 26 reflected what was actually happening, that is the participation of undocumented workers in trade unions.

19. Some delegations considered that the text should bring out more clearly the optional character of trade union participation for migrant workers, as well as the prerogative of unions to subject membership to their own rules. It was also felt by some representatives that the article should not appear to condone participation by migrant workers in political activities.

20. The Working Group provisionally agreed on the following text taking into account various oral amendments:

"26. (1) The States Parties to the present Convention recognize the right of all migrant workers and members of their families:

"(a) To take part [freely] in [peaceful] meetings and activities of trade unions and of other associations [apart from political parties and organizations] [legally] established for the protection of economic, social, cultural and similar interests [subject only to the rules of the organization concerned;]

"(b) To join any trade union and any such association as aforesaid,
[subject only to the rules of the organization concerned;]

"(c) To seek the aid and assistance of any trade union and of any such
association as aforesaid.

"(2) No restrictions may be placed on the exercise of these right other
than those which are prescribed by law and which are necessary in a democratic
society in the interests of national security, public order (ordre public), or
the protection of the rights and freedoms of others."

Article 27

21. The Working Group considered a text for article 27 of the draft Convention at
its 5th to 9th meetings, on 12-14 May 1982. The Working Group had before it a
revised proposal submitted by Finland, Italy, Norway, Portugal, Spain and Sweden
(A/C.3/36/WG.1/CRP.1/Add.1/Rev.1). The representative of Finland explained on
behalf of the co-sponsors the approach taken in the new proposal. His viewpoint is
reflected in document A/C.3/36/WG.1/CRP.1/Add.4. 1/ The revised proposal read as
follows:

"27. (1) Migrant workers and members of their families shall enjoy equality
of treatment with nationals of the receiving country in respect of social
security, provided that, as regards migrant workers and members of their
family who are undocumented or in an irregular situation, States Parties may
limit these rights to social security protection arising out of employment or
to contributory benefits, that is, benefits the grant of which depends on
direct financial participation by the migrant workers or their employer or on
a qualifying period of economic activity.

"(2) The application of the preceding paragraph shall be subject to the
provisions of any multilateral or bilateral conventions or agreements to which
the States concerned are parties. Such agreements shall, inter alia, make
provision for the maintenance of acquired rights and of rights in the course
of acquisition and for the payment of benefits outside the national
territory. The States Parties to the present Convention undertake to spare no
effort with a view to the conclusion of such agreements.

"(3) In so far as, because of the absence of bilateral or multilateral
arrangements, migrant workers and members of their families are not
specifically entitled to receive certain social security benefits or to
continue to receive such benefits, favourable consideration should be given to
the reimbursement of the whole or such part as may be appropriate in the
circumstances of any contributions which have been paid in respect of them.

1/ This document will be available to the members of the Working Group at
its next session. See also para. 110 of the report.

"(4) Migrant workers and members of their families shall be entitled to claim compensation from an employer for any loss of social security benefits due to his omission to give the notices and to make the payments required by the social security scheme or schemes by which they should normally have been covered."

22. The observer from ILO informed the Working Group that the concept of social security in ILO practice included benefits concerning medical care, sickness benefits, maternity benefits, invalidity benefits, old-age benefits, survivors' benefits, employment injury benefits, unemployment benefits and family benefits.

23. Following an initial debate on the proposed article, in which several delegations voiced their concern about dealing in the Working Group with a subject of such complexity as social security, the Working Group agreed to hold informal consultations with a view to elaborating a text which would meet the concerns expressed by a number of delegations. At its 7th meeting, on 13 May 1982, the Working Group had before it a revised text for article 27 (A/C.3/36/WG.1/CRP.1/Add.1/Rev.2) resulting from informal consultations with the participation of the following delegations: Argentina, Finland, France, Greece, India, Italy, Mexico, Norway, Portugal, Sweden, Turkey and Yugoslavia. The Working Group was informed that only paragraphs 1-3 of the proposed article had been extensively discussed in the informal meetings and that therefore paragraph 4 was left in the original version in the new document. The revised text read as follows:

"27. (1) Migrant workers and members of their families shall enjoy equality of treatment with nationals of the receiving country in respect of social security. As regards migrant workers and members of their family who are undocumented or in an irregular situation, States Parties may limit these rights to social security protection arising out of employment or to contributory benefits.

"(2) Where the application of the preceding paragraph requires the conclusion of multilateral or bilateral agreements, such agreements shall, inter alia, make provision for the maintenance of acquired rights and of rights in the course of acquisition and for the payment of benefits outside the national territory including provisions for transfer of pension, continuity of social benefits and accumulation of contributive rights. Where such agreements are required, the States Parties to the present Convention shall spare no effort to conclude them.

"(3) Insofar as migrant workers and members of their families are not specifically entitled to receive contributory social security benefits or to continue to receive such benefits, they shall be entitled to the reimbursement of the whole or such part as may be appropriate.

"(4) Migrant workers and members of their families shall be entitled to claim compensation from an employer for any loss of social security benefits due to his omission to give the notices and to make the payments required by the social security scheme or schemes by which they should normally have been covered."

24. The representative of the Netherlands placed on record his reservations concerning the proposed article, in particular the provisions for equality of treatment between migrant workers and nationals contained in the first paragraph. Stressing the need for the elaboration of a definition of the terms "migrant workers and their families" as well as "social security" he proposed that consideration of the article should be suspended until after the International Labour Conference completed its work on a revision of ILO Convention No. 48.

25. The representative of the United States also placed on record his delegation's reservations concerning the equality provisions and the lack of definitions in the proposed article, endorsed the remarks made by the representative of the Netherlands, and supported the proposal for postponement. He proposed the following with regard to draft article 27:

"Para 1 (a)

- add at the end of the paragraph the language from article 27 (1) in A/C.3/36/WG.1/CRP.1/Add.1/Rev.1 which defines 'contributory benefits' ('that is, benefits the grant of which depends on ...')
- define 'social security'
- broaden the right of States to limit social security benefits on an employment or contribution basis beyond undocumented migrant workers and members of their families
- acknowledge that absolute equality between nationals and migrant workers (and their families) on social security matters may not be possible

"Para 1 (b)

- define 'accumulation of contributive rights'
- replace 'spare no effort' with 'take all appropriate measures'

"Para 1 (c)

- place in brackets

"Para 2

- do not create automatic entitlement to compensation, but only right to seek legal redress."

26. Similar reservations concerning the article were also expressed by the representative of the United Kingdom.

27. Several delegations expressed the view that it would be advisable to achieve bilateral or multilateral agreements on social security.

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28. The representative of Greece placed on record that his delegation had proposed the inclusion of the term "accumulation of contributive rights" in paragraph 2 of article 27 so that States would enter bilateral or multilateral agreements that would ensure migrant workers the right to social security benefits based on the total number of years of contributions irrespective of the countries in which those contributions were made. Under this provision a migrant worker who had worked in different countries would be entitled to transfer, to the country of his choice, the rights towards which he had contributed in the total number of years he had worked, so that he would be entitled to the same benefits as if he had worked throughout in one country.

29. The representative of Turkey proposed to reword paragraph 4 as follows:

"(4) Migrant workers and members of their families shall be entitled to claim compensation for any loss of social security benefits due, inter alia, to the omission by the employer to give the notices and to make the payments required by the social security scheme or schemes by which they should normally have been covered."

30. At the 9th meeting, on 14 May 1982, the Working Group provisionally agreed to retain in brackets the proposed article as contained in document A/C.3/36/WG.1/CRP.1/Add.1/Rev.2, as further revised orally by the sponsors on the understanding that the objections raised by some delegations and the amendments proposed would be reflected in the report. The draft article read as follows:

"[27. (1) (a) Migrant workers and members of their families shall enjoy equality of treatment with nationals of the receiving State in respect of social security. As regards migrant workers and members of their family who are undocumented or in an irregular situation, States Parties may limit these rights to social security protection arising out of employment or to contributory benefits, [that is, benefits the grant of which depends on direct financial participation by the migrant workers or their employer or on a qualifying period of economic activity.]

"(b) Where the application of the preceding paragraph requires the conclusion of multilateral or bilateral agreements, such agreements shall, inter alia, make provision for the maintenance of acquired rights and of rights in the course of acquisition and for the payment of benefits outside the national territory including provisions for transfer of pension, continuity of social benefits and accumulation of contributive rights. Where such agreements are required, the States Parties to the present Convention shall spare no effort to conclude them.

"(c) Insofar as migrant workers and members of their families are not specifically entitled to receive contributory social security benefits or to continue to receive such benefits, they shall be entitled to the reimbursement of the whole or such part of the contributions paid as may be appropriate.

"(2) Migrant workers and members of their families shall be entitled to claim compensation from an employer for any loss of social security benefits due to his omission to give the notices and to make the payments required by the social security scheme or schemes by which they should normally have been covered.]"

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Article 28

31. At the 3rd meeting, on 11 May 1982, the Working Group considered a text for article 28 on the basis of the proposed article II.22 contained in document A/C.3/36/WG.1/CRP.1/Add.1, which read as follows:

"II.22 (1) All migrant workers and members of their families shall have the right to receive any medical care which is urgently required for the preservation of their life or the restoration of their health.

"(2) Such emergency medical care shall not be refused to them by reason of any irregularity in their situation or in that of their parents with regard to stay or employment or by reason of the absence of any guarantee as to the payment of the expenses involved."

32. The representative of the United States placed on record his delegation's reservations concerning the inclusion of the article in part II of the draft Convention, since in his view the article dealt with social welfare rights to be handled in part III and not in part II, which was supposed to be limited to basic human rights and fundamental freedoms. He also maintained that the article went beyond the corresponding provisions of the Covenant on Economic, Social and Cultural Rights and failed to distinguish adequately between emergency medical care actually required for the preservation of life and other forms of less urgent medical care.

33. At the same meeting the Working Group provisionally agreed to place the entire text of the proposed article 28 in brackets and to reconsider it at a later stage together with an alternative proposal submitted by the representative of Morocco, also placed in brackets, as follows:

"[28.(1) All migrant workers and members of their families shall have the right to receive any medical care which is urgently required for the preservation of their life or the restoration of their health.

"(2) Such emergency medical care shall not be refused to them by reason of any irregularity in their situation or in that of their parents with regard to stay or employment or by reason of the absence of any guarantee as to the payment of the expenses involved.]"

"[28. Emergency medical care required for the preservation of the life or the restoration of the health of migrant workers and the members of their families shall not be refused to them by reason of the irregularity of their situation or that of their parents with regard to stay or employment or by reason of the absence of a guarantee as to the payment of the expenses involved.]"

Articles 29 and 30

34. At its 3rd meeting, on 11 May 1980, the Working Group considered a text for articles 29 and 30 on the basis of the proposed article II.23 (1) and (2) contained in document A/C.3/36/WG.1/CRP.1/Add.1, which read as follows:

"II.23 (1) Access by children of any migrant worker to pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of their own stay in the receiving country.

"(2) The irregularity of its own situation or of that of its parents shall not have the effect of depriving a child of its right to a name or of the right to a nationality, in accordance with the Convention of 1961 on the reduction of statelessness."

35. It was agreed that the two paragraphs in the article as proposed should become two separate articles in the draft Convention, and that each article should be considered separately by the Working Group.

36. In the course of the debate on article 29 the representative of Turkey, supported by Morocco, proposed that the article should contain a positive statement of the basic right of the children of all migrant workers to education. The representative of the United States placed on record his reservations concerning the inclusion of the proposed article in part II rather than part III of the draft Convention, since part III would apply exclusively to documented migrant workers lawfully admitted to the country of employment.

37. At the same meeting the Working Group provisionally agreed to retain in brackets the additional clause proposed by the representative of Turkey and the text of article 29 as proposed, which reads:

"[29. [Children of all migrant workers shall have the basic right of access to education.] [Access by children of any migrant worker to pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of their own stay in the receiving State.]"

38. The representative of Morocco expressed the view that the proposal made by Turkey should become a separate paragraph of article 29 in the final formulation.

39. During consideration of the proposed article 30 some delegations objected to specific mention of the Convention on the Reduction of Statelessness of 1961, since it had not been widely ratified. The inclusion of a right of registration, as provided for in article 24 of the International Covenant on Civil and Political Rights, was proposed by the representatives of Turkey and Mexico.

40. At the same meeting the Working Group provisionally agreed on the following text for article 30:

"[30. The irregularity of its own situation or of that of its parents shall not have the effect of depriving a child of its right to a name, to registration, or of the right to a nationality, with a view to reducing cases of statelessness.]"

Article 31

41. At its 3rd meeting, on 11 May 1982, the Working Group considered a text for ~~article 31 on the basis of the proposed article II.24 in document A/C.3/36/WG.1/CRP.1/Add.1~~, which read as follows:

"II.24 The States Parties to the present Convention shall ensure respect for the cultural identity of all migrant workers and their families and shall permit them to maintain their cultural links with their country of origin."

42. The representative of the United States placed on record his reservations concerning the wording of the proposed article and its inclusion in part II rather than part III of the draft Convention. He objected to the approach adopted in the proposed text in that it placed a positive obligation on States Parties to protect the cultural rights of all migrant workers and proposed that the article should be rephrased along the lines of article 15 of the Covenant on Economic, Social and Cultural Rights, in order to shift the initiative from the State to the migrant workers themselves, with the State in a secondary role of enforcing the rights concerned.

43. Several representatives expressed the view that the protection of the cultural rights of migrant workers was the joint responsibility of both the countries of origin and of employment and the representative of Morocco suggested the addition of a clause under which States of employment "shall co-operate with the countries of origin to promote the cultural links of migrant workers with their countries."

44. At the same meeting the Working Group provisionally agreed to retain in brackets the text of the article as proposed and two alternative formulations proposed by the United States, as follows:

"[31. The States Parties to the present Convention shall ensure respect for the cultural identity of all migrant workers and their families and shall permit them to maintain their cultural links with their State of origin.]"

"[31. All migrant workers and their families shall enjoy the right to maintain their cultural identity.]"

"[31. The States Parties to the present Convention shall recognize the right of all migrant workers and their families to maintain their cultural identity.]"

Article 32

45. At the 4th meeting, on 11 May 1982, the Working Group considered a text for article 32 of the draft Convention on the basis of the proposed article 31 in document A/C.3/36/WG.1/CRP.1/Add.1/Rev.1, which read as follows:

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"31. Upon the termination of their stay in the receiving country, all migrant workers and members of their families shall have the right freely to transfer any savings and to take with them all personal effects, working tools and other belongings."

46. The representative of the United States of America placed on record his reservations concerning the proposed text as well as its inclusion in part II of the draft Convention, once again on the basis of his delegation's understanding that part II was to be devoted solely to basic human rights and fundamental freedoms which would unquestionably be applied in all States to all migrant workers and members of their families, without regard to their legal status in the State concerned.

47. Other delegations stressed that the article refers to a basic human right. The representative of Argentina said that in the case of migrant workers this right constitutes the effective exercise of the right to property. Some other delegations pointed out that the article reflected the right of migrant workers to enjoy the benefits of their work.

48. Some delegations proposed the deletion of the word "freely" between the word "the right" and the words "to transfer", in order to take into account regulations on exchange control and other relevant aspects. An alternative suggestion by the representative of Argentina, subsequently modified in the course of the meeting, was to add a final clause to read "in conformity with the modalities in force in the receiving country" if the word "freely" was retained.

49. At the same meeting the Working Group provisionally agreed on the following text for article 32:

"32. Upon the termination of their stay in the receiving State, all migrant workers and members of their families shall have the right to transfer any savings and to take with them all personal effects, working tools and other belongings."

Article 33

50. The Working Group considered a text for article 33 of the draft Convention at its 6th and 10th meetings, on 12 and 14 May 1982, on the basis of the proposal contained in document A/C.3/36/WG.1/CRP.1/Add.1/Rev.1, which read as follows:

"33. (1) Migrant workers and members of their families shall have the right to obtain information concerning:

"(a) Their rights arising out of this Convention;

"(b) Their obligations under the law and practice of the receiving country and such other matters as will enable them to comply with administrative or other formalities;

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"(c) Rights and obligations arising out of past residence and citizenship and/or remunerated activity in the country of origin or the country of departure;

"(d) Measures and facilities aimed at taking care of such special needs as they may have until they are adapted to the society of the receiving country;

"(e) Measures and facilities aimed at enabling them to make full use of services and facilities provided in the receiving country;

"(f) Facilities and services established for the purpose of maintaining the cultural and other links of migrant workers and members of their families with their countries of origin.

"(2) Each State Party to this Convention shall provide the said information or ensure that it is effectively provided by employers, trade unions or other non-governmental bodies or institutions. In so far as necessary, it shall co-operate with other States concerned.

"(3) The said information shall be provided, upon request, to migrant workers and to members of their families in their own language or in a language which they are able to understand.

"(4) The rights to obtain information shall be applicable both for migration and for return migration.

"(5) Migrant workers and members of their families shall have access to the said information in so far as possible before their departure in order to enable them to base their decision on relevant facts.

"(6) The said information shall be provided to migrant workers and members of their families free of charge."

51. The proposed text was reformulated in the course of the meetings on the basis of informal consultations between the sponsors and interested delegations.

52. The representative of the United States placed on record his reservations concerning the setting of the article in part II of the draft Convention, since in the view of his delegation the article was not applicable to undocumented migrant workers. He proposed that, if retained in part II, the article should be surrounded by brackets, the words "in the country of origin" should be inserted after the words "right to obtain information" in paragraph 1, and "wherever possible" should qualify the right to obtain information free of charge and in the migrant worker's own language.

53. The representative of Morocco, supported by Turkey and Yugoslavia, stressing that access to information was a fundamental human right of migrant workers, the exercise of which might reduce illegal migration, supported the retention of the article in part II of the draft Convention and proposed that paragraph 1 be amended to read:

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"Migrant workers and members of their families shall have the right to be informed by both the country of origin and the country of employment ..."

54. In the course of the Group's consideration of the amendment it was stressed by some representatives that the information in question should be provided to migrant workers and their families before departure. In addition, the representative of Yugoslavia stressed the importance for the migrant workers and the members of their families to be informed on the conditions of admission to the State of employment and suggested that that phrase be inserted at the beginning of subparagraph (i) (b) of article 33. One representative suggested that paragraph 2 might need to be reformulated at the second reading in order to bring it into line with paragraph 1 if the amendment was accepted. Other representatives opposed this proposal on the grounds that it assumed all such persons would actually depart and that it made no sense in the case of undocumented migrant workers and members of their families. Some representatives thought it advisable that paragraph 1 should also refer to information on measures taken by States to implement the rights arising out of the Convention, as in the original proposal, and suggested that the question should be re-examined at the second reading. The representative of the Byelorussian SSR proposed that the words "non-governmental" in paragraph 2 be replaced by the word "appropriate".

55. At the 10th meeting, on 14 May 1982, the Working Group provisionally agreed on the following text for article 33:

"33. (1) Migrant workers and members of their families shall have the right to be informed by both the State of origin and the State of employment concerning:

"(a) Their rights arising out of this Convention;

"(b) The conditions of admission, their rights and obligations under the law and practice of the receiving State and such other matters as will enable them to comply with administrative or other formalities in that State;

"(2) Each State Party to this Convention shall take the appropriate measures to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, it shall co-operate with other States concerned.

"(3) The said information shall be provided to migrant workers and to members of their families, wherever possible free of charge, upon request and in their own language or in a language which they are able to understand."

Article 34

56. At its 4th meeting on 11 May 1982, the Working Group considered a text for article 34 of the draft Convention on the basis of the proposed article 32 contained in document A/C.36/WG.1/CRP.1/Add.1/Rev.1., which read as follows:

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"32. None of the provisions of Part II of this Convention shall have the effect of relieving migrant workers and the members of their families from the obligation to observe the laws of the country of transit or the receiving country and to refrain from conduct likely to prejudice the customs and the cultural identity of the inhabitants of such countries."

57. On the proposal of India it was provisionally agreed that the article would be inserted after the proposed article 33 in that document and would become a new article 34.

58. In the course of the consideration of the article, the Chairman, supported by some delegations, suggested that the words "cultural identity" be replaced by the words "usages and traditions" since the concept of cultural identity usually refers to minorities. The representative of Turkey proposed that the words "to refrain from conduct likely to prejudice the customs and" be replaced by the words "to respect" in order to clarify the obligations imposed by the article on migrant workers and their families.

59. The representative of the United States submitted a proposal for a reformulation of the text, which after further discussion was provisionally agreed upon by the Working Group, as follows:

"34. None of the provisions of Part II of this Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States."

60. It was understood that while article 34, as provisionally agreed, referred only to part II, the Working Group would return to the question of safeguard clauses at a later stage when an overview of all the rights guaranteed in the draft Convention would become possible.

Article 35 and 36

61. At the 6th meeting, on 12 May 1982 the Working Group considered texts for articles 35 and 36 on the basis of the proposed articles 34 and 35 in document A/C.3/36/WG.1/CRP.1/Add.1/Rev.1.

62. After some discussion on the proposed texts and on the most appropriate location of the articles in the draft Convention, the Working Group postponed consideration of the draft articles on the understanding that their final setting in the instrument would be decided upon at a later stage. The articles read as follows:

"35. The rights provided for in this Convention shall not be capable of renunciation. It shall be unlawful to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. [Any agreement to relinquish or forego any of the said rights shall be void.]"

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"36. Everyone whose rights as set forth in this Convention are violated shall have an effective remedy, including cases in which the violation has been committed by persons acting in an official capacity."

Article 37

63. The Working Group considered a text for article 37 at its 10th meeting, on 14 May 1982, on the basis of the proposed article 36 contained in document A/C.3/36/WG.1/CRP.1/Add.1/Rev.1. The Working Group gave some consideration to the draft article and was of the view that the article was useful but might need rewording and should be considered later together with articles 34 and 35 (renumbered 35 and 36). The draft article reads as follows:

"37. Nothing in Part II of this Convention shall be interpreted as implying the recognition of the legality of the situation of a migrant worker or a member of his family who is undocumented or in an irregular situation or any right to the regularization of his situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in Part V."

64. The Working Group thus concluded its first reading of part II of the draft Convention on the understanding that the text which was provisionally agreed on would be further examined at a later stage in order to harmonize it with the rest of the Convention and to adopt a text without brackets.

65. Some delegations acknowledged that certain articles proposed for part II dealt with important, but not vital, rights. Consequently, they suggested changing the title of part II to "Rights of all migrant workers". The Working Group decided to consider this proposal during its second reading of the draft Convention.

B. Part I. Scope and definitions

66. At its 11th to 13th meetings, on 17 to 20 May 1982, the Working Group, following a decision taken at the 1st meeting and an agreement reached in informal consultations, gave preliminary consideration to the provisions to be included in part I of the draft Convention concerning its scope and definitions. The Working Group had before it for this purpose the compilation of proposals contained in document A/C.3/36/WG.1/WP.1 and agreed to follow, in order to facilitate discussion, the structure of column C of that document.

Articles 1 and 2

67. The representative of Finland, on behalf of the sponsors, introduced their proposals contained in part I, column C of document A/C.3/36/WG.1/WP.1 and explained that they have a broader concept of migrant workers for the purpose of including certain categories of workers that have not been covered by ILO Conventions. He also said that it would be more appropriate to use in the Convention the term "undocumented migrant worker or in an irregular situation". In

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this regard the Chairman reminded the Working Group of resolution 3449 (XXX) of the General Assembly which established that all the organs of the United Nations system and other specialized agencies shall use the term "undocumented migrant workers or in an irregular situation" for those workers that have entered into a country illegally or surreptitiously.

68. The proposed article 1 read as follows:

"Article 1: Scope

This Convention is applicable, except as otherwise provided hereafter, and without distinction on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, age, property, birth or other status:

- "(a) To every migrant worker, whether male or female, who:
 - "(i) Leaves a country, including his own, to exercise a gainful activity in another country;
 - "(ii) Engages in work in a country of which he is not a national;
 - "(iii) Returns to his country of origin or to the country in which he is normally resident;
 - "(iv) Is in transit in a third country in the cases mentioned in sub-paragraphs (i) and (iii) above;
- "(b) To the members of the family of the said worker who:
 - "(i) Accompany the worker to another country;
 - "(ii) Join the worker in that country or in the country to which the worker has returned;
 - "(iii) And, in the case of the worker's children, were born in the country where the worker has gone."

69. Several delegations suggested that the concept of ethnicity should be included in the non-discrimination clause at the beginning of the article. The representative of the USSR proposed to place the word "attitude" before the word "religion". Some representatives proposed the deletion of the clauses contained in paragraphs (a) and (b) on the grounds that they provided a set of definitions additional to those contained in article 2. It was also suggested that the words "whether male or female" in paragraph (a) were redundant and should be deleted. Other delegations, however, pointed out that the proposed deletion of paragraphs (a) and (b) would eliminate from the text the dynamic element relating to the migration process.

70. Members of the Working Group were of different views as to whether the

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Convention should include workers permanently residing in the country of employment, and how these should be defined. Some delegations viewed acquisition of citizenship of the country of employment and the right to vote in that country as the main defining factor for exclusion from the Convention. Others stressed movement across borders and the temporary nature of work as the main criteria for status as a migrant worker. The representative of the United States suggested that the Convention deal with three categories of migrant workers: the undocumented migrants, the documented long-term migrants and the documented short-term migrants. He indicated that immigrants and refugees should not be considered migrant workers and explained that his country has historically made no distinction between the right to permanent residence and the right to employment. The representative of Argentina stated that immigrants should not be included in the definition of the term "migrant workers" and reiterated his preference for the definition contained in article 1 of column A of document A/C.3/36/WG.1/WP.1 with the amendments contained in annex XVI of document A/36/378. Reference was also made by some delegations to the proposed declaration on the rights of non-citizens as a more appropriate instrument for dealing with the rights of aliens permanently residing in another country.

71. With respect to undocumented workers, reference was made to the definition contained in General Assembly resolution 3449 (XXX). Some delegations, however, suggested that an appropriate wording should be found to reflect the fact that many non-documented workers had entered the country of employment legally on a tourist or student visa.

72. With regard to the situation of family members of the migrant workers, the view was expressed that the Convention should not be applicable to children of migrant workers who were nationals of the country of employment. The representative of Mexico proposed that the words "except in cases where nationality is acquired at birth" be added at the end of subparagraph (b) (iii) in article 1. Some representatives, however, felt that the Convention should take into account the dual nationality provisions in many national legislations.

73. At its 16th meeting, on 19 May 1982, the Working Group, after further informal consultations, provisionally agreed on the following text for article 1:

"1. This Convention is applicable to all migrant workers and members of their families, except as otherwise provided hereafter and without distinction on grounds such as sex, race, colour, language, religion or convictions, political or other opinion, national, ethnic or social origin, nationality, age, economic position, [property,] birth, marital or any status."

74. The Working Group then proceeded to a preliminary consideration of the proposed definitions of the term "migrant worker" on the basis of draft article 2 in column C of document A/C.3/36/WG.1/WP.1 which read as follows:

"Article 2: Definition of the term 'migrant worker'"

"(1) For the purpose of Article 1 above, the term 'migrant worker' refers to any person who is to engage, is engaged or has been engaged in work, including

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work on his own account, in a country of which is not a national. The term includes:

"(a) Workers engaged, for remuneration, by virtue of an individual contract, whether written or tacit, of a collective agreement, of an arbitration award or of regulations, in the execution of any kind of work for an employer, whether an individual person or a body corporate, public or private, irrespective of

(i) The customary place of residence of the employer or the offices of the enterprise;

"(ii) The duration of the employment (including part-time, casual or seasonal employment);

"(iii) The nature of the work, functions and responsibilities;

"(iv) The sector or branch of activity;

"(v) The amount of wages and remuneration and the manner in which they are calculated;

"(b) Self-employment workers:

"(i) Artisans;

"(ii) Traders;

"(iii) Artists;

"(iv) Members of the liberal professions;

"(v) Members of production cooperatives and self-managed enterprises;

"(vi) Semi-independent workers, share-croppers, etc., insofar as under the provisions of national legislation, they are not already covered by sub-paragraph (s)

"(2) Except as otherwise provided hereafter, the term 'migrant worker' includes, inter alia:

"(a) Frontier workers, that is to say, workers who engage in work in one country but retain their normal residence in a neighbouring country, to which in principle they return every day or at least once a week;

"(b) Itinerant workers, that is to say those who have their normal residence in one country and for purposes of their occupation have to go to another country for a short period; the term 'itinerant workers' covers in particular:

"(i) Commercial travellers and agents;

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- "(ii) Workers engaged in any function whatsoever on any means of air, rail, river or road transport, whether publicly or privately owned, outside the territory of the country where they have their normal residence or of which they are nationals;
- "(iii) Workers who accompany a delivery or carry out after sales services or are employed in assembling, regulating, putting into operation, demonstrating, maintaining, repairing, etc., products which have been delivered;
- "(c) Seafarers, including fishermen, who are engaged in any function whatsoever on board a publicly or privately owned vessel other than a warship registered in the territory of a country of which they are not nationals;
- "(d) Trainees, that is to say those who are employed with a view to obtaining training or further training;
- "(e) Students who take up part-time employment to meet the cost of their maintenance and studies or who take up employment for a limited period during university vacations.

"(3) The term 'migrant worker' excludes:

"(a) [to be inserted, as appropriate]

"(b)

"(c)

"(d) Persons covered by the following Conventions:

Convention of 13 February 1947 on the Privileges and Immunities of the United Nations;

Convention of 21 November 1947 on the Privileges and Immunities of Specialized Agencies;

Convention of 18 April 1961 on Diplomatic Relations;

Convention of 24 April 1963 on Consular Relations."

75. A number of delegations expressed preference for a short and concise definition which would be general and comprehensive enough to take account of changing conditions, while others supported a broad and enumerative definition which would cover also categories of persons not protected by other international instruments.

76. The representative of the Netherlands stressed repeatedly the need for narrow definitions in order to increase the acceptability of the draft Convention to receiving states. He expressed the view that the scope of the draft could be effectively widened by the use of optional protocols which could be ratified separately.

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77. Members of the Working Group felt that the concept of leaving one's country for seeking work in another country should be at the basis of the proposed definition. It was also generally felt that such work should be licit and should provide the main income of the person in question. Concerning the question of which categories of workers should be included in the definition, there was general agreement in the Working Group that all government personnel should be excluded. Many members also spoke in favour of excluding investors and managerial personnel, although the difficulty of establishing upper limits within such categories was pointed out. A number of representatives expressed the view that the Convention should address itself to the most vulnerable categories and that economic need and dependence on an employer should be the main defining elements, thus excluding any self-employed individuals. Other representatives, while agreeing that the Convention should exclude privileged categories, felt that unprivileged small entrepreneurs should have their rights protected. Divergent views were also expressed concerning the inclusion of other categories listed in the proposed definition in article 2, such as frontier workers, seasonal workers, students on part-time employment, cultural workers and the like.

78. It was stressed that the term "migrant worker" should be defined in a clear and unambiguous way. In this connexion some delegations pointed out that any definition of that term which might be formulated must exclude, inter alia, employees of organizations or undertakings operating within the territory of a country who had been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who were required to leave that country on the completion of their duties or assignment. They indicated that this formula had been already adopted in the ILO instruments on the subject of migrant workers.

79. Some delegations objected to the proposals to widen the scope of the Convention by extending it to include any person who worked, for whatever reason, in a country other than his own. They indicated that those suggestions were in clear contradiction with the mandate given to the Working Group in General Assembly resolution 34/172 as well as with the very purpose and the whole thrust of the discussion of the question of migrant workers in the Third Committee of the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Commission for Social Development.

80. The Working Group agreed to give further consideration to draft article 2 in informal consultations.

Article 3

81. The Working Group considered a text for article 3 on the basis of the proposal contained in column C of document A/C.3/36/WG.1/WP.1, as orally revised by the representative of Finland, which read as follows:

"Article 3: Definition of the term 'members of the family'

For the purposes of Article 1 above, the term 'members of the family of the worker' includes all persons recognized as such by the applicable national legislation and international standards, and in particular:

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(a) The spouse, that is to say

(i) The husband or wife legally married to the worker;

[(ii) In the absence of marriage, the companion who lives matrimonially with the worker if such a relationship is recognized by the law governing the personal status of the worker]

(b) The children, [whether legitimate, natural and recognized or adopted] who, according to the applicable legislation, are considered as regularly dependent upon and in the care of the worker or his spouse;

(c) Dependent ascendants of the worker or his spouse"

82. For the introductory part of this article, the representative of the United States, supported by the representative of the Netherlands, proposed the following text:

"For the purposes of this Convention, the term 'members of the family' includes all persons recognized as such by the applicable national legislation of the State of employment."

83. In this connexion, several representatives agreed that any reference to international standards applicable to the definition of members of the family of the migrant workers should be deleted as introducing a subjective element in the application of the Convention. The representative of Belgium was of the view that the reference to national legislation should also be deleted because that expression could be interpreted too broadly. The representative of Greece, supported by the representative of Yugoslavia, expressed the opinion that the definition of the members of the family should be in accordance with the legislation of the State of origin. The representative of Italy considered that the legislation of the State of origin, transit or employment should be applicable, depending on the country in which migrant workers and their families find themselves.

84. Some representatives felt that the definition of members of the family of a migrant worker should be as broad as possible to take into account the different concepts of family prevailing in various regions of the world. In this regard, it was felt that when the Working Group considered part III of the Convention, it would establish who were the members of the family entitled to the additional rights contained therein, as well as the norms governing family reunion.

85. The representative of Egypt was of the view that in accordance with the principles of international law and, as a matter of principle, the members of the family are defined subject to the national law of the state of origin of the worker. He stated that the proposed reference to the state of employment for such a matter is just an exception and for the purposes of this Convention only. Then it is possible to develop other definitions for the members of the family subject to bilateral or multilateral agreement.

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86. Several representatives considered that the definition of members of the family of the migrant worker should include, at least, the spouse, the minor, unmarried and dependent children and any other person defined as "members of the family" by the domestic law of the country of employment. With regard to the definition of the spouse, the representative of Turkey, supported by the representative of Morocco, proposed the following wording: "the spouse or the person considered as such by the law of the State of employment". With regard to children, it was pointed out that the question of minors under the guardianship of a migrant worker should be taken into account in the definitions. Some representatives stated that the term of dependent ascendants of the worker or his spouse should be excluded from the definition of members of the family, while other delegations felt that this term could be limited to the father and mother of the migrant worker.

87. The representative of Argentina stated that if the definition of members of the family of the migrant workers does not include dependent children, it should be mentioned expressly handicapped children, minor or not, since these children could not be excluded from such a definition.

88. The representative of India proposed the following text for the whole article, with a view to facilitating an agreement:

"For the purpose of this Convention, 'family' includes, at least, spouse and minor and dependent children.

"For any broader definition of 'family', the interpretation in the country of employment will be applicable, subject to any bilateral or regional agreements between the concerned State Parties."

89. At its 17th meeting, on 20 May 1982, the Working Group provisionally agreed on the following text for article 3:

"3. For the purpose of this Convention, the term 'members of the family' includes the spouse [or the companion who lives matrimonially with the worker if such a relationship is recognized by the laws] [governing the personal status of the worker] [of the State of employment or the State of origin], [the dependent [minor, unmarried] children], [the dependent parents of the worker or the spouse] and other persons who are recognized as members of the family for the purpose of this Convention by the relevant laws and regulations of the State of employment or relevant bilateral or multilateral agreements between the States Parties concerned."

Article 4

90. The Working Group then proceeded to a preliminary consideration of the proposed article 4 in column C of document A/C.3/36/WG.1/WP.1 which read as follows:

"Article 4: Application to persons who are undocumented or in an irregular situation

"(1) Except as otherwise provided, hereafter this Convention is applicable to all migrant workers and members of their families as defined in the

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preceding articles, even if they are undocumented or are in an irregular situation.

"(2) For the purposes of the preceding paragraph, the following are considered as undocumented or in an irregular situation:

"(a) In respect of admission and stay, all those who are within the national territory of a country of which they are not nationals and

"(i) Have not complied with the formalities and obtained the authorizations required by law for admission to and stay in the country concerned; or

"(ii) Having complied with the formalities and obtained the authorizations required by law for admission to and stay in the country concerned, cease to fulfil the conditions to which their admission and stay in that country are subject;

"(b) In respect of the exercise of a gainful activity, all those who work in a country of which they are not nationals and

"(i) Have not complied with the formalities and obtained the authorizations required by law to exercise a gainful activity in the country concerned, or

"(ii) Having complied with the formalities and obtained the authorizations required by law for the exercise of a gainful activity in the country concerned, exercise a gainful activity for which the said formalities and the authorizations obtained are not or are no longer valid."

91. The representatives of Morocco and the Netherlands expressed doubts with regard to the title of this article, which, in their view, should be reformulated as a definition.

92. In considering paragraph (1) of the proposed article 4, various members of the Working Group felt that the expression "Except as otherwise provided" contained in it was not clear and expressed the view that a better formulation should be found to explain that the Convention is applicable to all migrant workers (undocumented or documented), with the exception of its parts III and IV. The representative of Finland, supported by the representative of Italy, proposed to delete this paragraph and to replace it with the following text:

"For the purposes of the present Convention, the following migrant workers are considered undocumented or in an irregular situation".

93. The representative of the Netherlands, supported by the representative of Belgium, considered that the Working Group should concentrate upon defining "regular or documented migrant workers", the categories of undocumented migrants being deduced a contrario from that definition. He reiterated that there was no need for defining terms which would, for the time being, not appear in the draft Convention. In his view, on the basis of the proposals before the Group a definition would be needed of the term "migrant worker in a regular situation" as

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used in part III of the proposed draft Convention. In this connexion, the representative of Belgium proposed the following text:

"For the purpose of this Convention the persons considered to be in a regular situation are migrant workers who fulfil the conditions to which the country of employment has subjected the granting of the authorization of the exercise of a gainful activity".

94. With regard to paragraph 2 (a) of the proposed article 4, the representative of the United States suggested to replace the words "all those who are within the national territory etc." by "all persons who are present and employed within the national territory etc," in order to emphasize the necessity of a link to employment and to make clear that the draft convention is concerned with migrant workers, not all foreign nationals.

95. With regard to paragraph 2 (a) (i), the representative of the United States, supported by the representative of Italy, suggested to replace the word "formalities" with "immigration laws and regulations of the State of employment".

96. The Working Group agreed to give further consideration to article 4 in informal consultations.

97. At its 18th meeting on 20 May 1982, the Working Group had before it the following text proposed by the Chairman after informal consultations:

"For the purposes of this Convention the following migrant workers and members of their families, as the case may be, are considered as undocumented or in an irregular situation:

"(a) In respect of admission and stay, all those within the national territory of a state of which they are not nationals and who have not complied with the laws and regulations of the state of employment concerning admission and state or ceased to fulfil the conditions provided for in such laws and regulations;

"(b) In respect of work, all those who are in a state of which they are not nationals and have not obtained the authorization required by the laws and regulations of the state of employment for this purpose or who ceased to fulfil the conditions provided for in the said laws and regulations."

98. The representative of the United States proposed the following amendments:

(a) In the introductory part of the article insert the word "unlawful" between the words "irregular" and "situation";

(b) In paragraph (a) of the article change the wording "all those who are within the national territory" with the wording "all those who are employed or in transit within the national territory";

(c) In paragraph (b) of the article change the wording of the first two lines as follows: "In respect of work, all those who are employed in a State of which they are not nationals and have not obtained, in accordance with the applicable laws and procedure, the authorization required ...".

99. The representative of Morocco proposed the following wording for the introductory paragraph and paragraph (a) of the article:

"For the purpose of this Convention, the following migrant workers are considered as undocumented or in an irregular situation;

(a) In respect of admission and stay, all the migrant workers and members of their families, as the case may be, who are within the national territory ..."

100. The representative of France proposed the following new text for this article:

"For the purpose of this Convention, the term 'migrant worker' in an irregular situation or member of his family in an irregular situation means, as appropriate, any person considered as such by one or all of the relevant laws and regulations of the state of employment concerning admission, stay or employment."

101. The representative of the Netherlands proposed the following alternative text for draft article 4 as proposed by the Chairman:

"For the purposes of this Convention, migrant workers in a regular situation are those who have complied with the laws and regulations of the state of employment concerning admission and stay, have legally obtained the authorization required by the laws and regulations of the State of employment for the purpose of work and have not ceased to fulfil the conditions provided for in the said laws and regulations."

102. In this regard the representatives of Pakistan and Turkey proposed the following alternative text:

"For the purposes of this Convention, the migrant workers and members of their families who are within the national territory of a State of which they are not nationals and who have complied with the laws and regulations of the State of employment in respect of admission, stay and work shall be considered to be in a regular situation."

103. The representative of India made the following proposal:

"For the purposes of this Convention, the following migrant workers and members of their families, as the case may be, are considered as undocumented or in an irregular situation:

"All those who are within the national territory of a State of which they are not nationals and who have not complied with the laws and regulations of the

State of employment concerning admission, stay and work or ceased to fulfil the conditions provided in such laws and regulations."

104. The Working Group agreed that further consideration of article 4 was needed before reaching a consensus on its text.

Article 5

105. The Working Group considered a text for article 5 on the basis of the proposed text in column C of document A/C.3/36/WG.1/WP.1, which read as follows:

"Article 5: Application during the process of migration

The rights set forth in this Convention shall be recognized and guaranteed during the entire migration process, that is, during the preparation for emigration, on leaving from the country of departure, in the course of transit through a country, during the journey, during the entire period of stay, residence, employment or work in the country of employment [the receiving country], and on return to the country of origin or the country of normal residence."

106. The proposed text for article 5 was amended by the representatives of the United States and the United Kingdom. The Working Group provisionally agreed on the following text:

"Article 5. Application during the process of migration

"The rights, as set forth in this Convention, shall be recognized and guaranteed during the entire migration process, that is, during the preparation for emigration, on leaving from the State of departure, in the course of transit through a State, during the journey, during the entire period of stay, residence, employment or work in the State of employment and on return to the State of origin or to the State of normal residence."

Article 6

107. The Working Group considered a text for article 6 of the draft Convention on the basis of the proposed text in column C of document A/C.3/36/WG.1/WP.1, which read as follows:

"Article 6: Definition of the terms 'country of departure', 'country of origin', 'country of employment [receiving country]', 'country of return' and 'country of transit'

For the purpose of this Convention:

(a) The term 'country of departure' means any country, including his own, that the migrant worker leaves to exercise a gainful activity in another country and that the members of the family of the said worker leave to accompany or to join the worker;

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(b) The term 'country of origin' means the country of which the migrant worker and the members of his family are nationals;

(c) The term 'country of employment' [receiving country] means the country where the migrant worker is for the purpose of employment or work and where members of his family have accompanied or joined him;

(d) The term 'country of return' means the country to which the worker decides to return, whether it be his country of origin or the country in which he is normally resident;

(e) The term 'country of transit' means any country through which the worker or members of his family pass on their departure or return."

108. At its 15th meeting, on 19 May 1982, the Working Group provisionally agreed on the following text for article 6:

"Article 6. Definition of the terms 'state of origin', 'State of employment', 'State of return' and 'State of transit'

"For the purpose of this Convention:

"(a) The term 'State of origin' means the State of which [the migrant worker or the members of his family, as the case may be [any persons to which this Convention is applicable], are nationals;

"(b) The term 'State of employment' means the State where the migrant worker is for the purpose of [employment] [or work] [and where members of his family have accompanied or joined him];

"(c) The term 'State of return' means the State to which the migrant worker [or members of his family] decides to return, whether it be his State of origin or the State in which he is normally resident;

"(d) The term 'State of transit' means any State through which the migrant worker [or members of his family] pass on their departure or return."

109. The Working Group thus concluded its preliminary considerations of part I of the Convention and agreed to postpone further consideration of articles 2 and 4, which were still pending, to a later stage.

C. Part III: Additional rights of migrant workers and members of their families in a regular situation

110. At its 18th meeting, on 20 May 1982, the Working Group had a preliminary exchanged of views on the contents of part III of the Convention dealing with rights of migrant workers and members of their families in a regular situation based on the further suggestions submitted by Finland, Italy, Norway, Portugal, Spain and Sweden for parts III, IV and V of the draft Convention (A/C.3/36/WG.1/CRP.1/Add.2). That document was formally introduced by the

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representative of Finland at the 10th meeting of the Working Group, on 14 May 1982, on behalf of the co-sponsors. The views expressed by the representative of Finland are reflected in document A/C.3/36/WG.1/CRP.1/Add.4.

111. The representative of Greece stated that his Government joined the co-sponsors of the above-mentioned suggestions for part III and would consider co-sponsoring those relating to parts IV and V of the Convention. However, he expressed reservations with regard to suggestions concerning part IV, in particular those referring to seafarers.

112. At the end of its intersessional meetings, the Working Group expressed the wish that the Third Committee of the General Assembly at its thirty-seventh session allocate twenty meetings for the next session of the Working Group in a concentrated period of time.

113. At its 19th and 20th meetings on 21 May 1982, the Working Group discussed the draft report on its intersessional meetings 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 General Assembly at its thirty-seventh session.

114. The representative of France stated that he was not in a position to express an opinion on paragraphs 97-99, 101-104 and 109-113 of the draft report because he had been unable to study them in the working languages other than English.

II. TEXT OF ARTICLES OF THE DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES TO WHICH THE WORKING GROUP PROVISIONALLY AGREED IN A FIRST READING DURING ITS INTERSESSIONAL MEETING 2/ 3/

PART I

Scope and definitions

Article 1.

This Convention is applicable to all migrant workers and members of their families, except as otherwise provided hereafter and without distinction on grounds such as sex, race, colour, language, religion or convictions, political or other opinion, national, ethnic or social origin, nationality, age, economic position, [property], birth, marital or any other status.

2/ For the text of the preamble and arts. 7 to 23 of part II of the draft Convention, see chap. II of the report of the Working Group to the Third Committee of the General Assembly at its thirty-sixth session (A/C.3/36/10).

3/ Square brackets indicate language upon which the Working Group has not reached agreement.

Article 3.

For the purposes of this Convention, the term "members of the family" includes the spouse [or the companion who lives matrimonially with the worker if such a relationship is recognized by the laws] [governing the personal status of the worker] [of the State of employment or the State of origin], [the dependent [minor, unmarried] children], [the dependent parents of the worker or the spouse] and other persons who are recognized as members of the family for the purposes of this Convention by the relevant laws and regulations of the State of employment or relevant bilateral or multilateral agreements between the States Parties concerned.

Article 5. Application during the process of migration

The rights, as set forth in this Convention, shall be recognized and guaranteed during the entire migration process, that is, during the preparation for emigration, on leaving from the State of departure, in the course of transit through a State, during the journey, during the entire period of stay, residence, employment or work in the State of employment and on return to the State of origin or the State of normal residence.

Article 6. Definition of the terms "State of origin", "State of employment", "State of return" and "State of transit"

For the purpose of this Convention:

(a) The term "State of origin" means the State of which [the migrant worker or the members of his family, as the case may be] [any persons to which this Convention is applicable], are nationals;

(b) The term "State of employment" means the State where the migrant worker is for the purpose of [employment] [or work] [and where members of his family have accompanied or joined him];

(c) The term "State of return" means the State to which the migrant worker [or members of his family] decides to return, whether it be his State of origin or the State in which he is normally resident;

(d) The term "State of transit" means any State through which the migrant worker [or members of his family] pass on their departure or return.

PART II

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

Article 24. Every migrant worker and every member of a migrant worker's family shall have the right to recognition everywhere as a person before the law.

Article 25. (1) All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the receiving State in respect of remuneration and:

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(a) Other conditions of work, that is to say overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, and any other conditions of work which, according to national laws or practice, are covered by this term;

(b) Other terms of employment, that is to say minimum age of employment, restriction on home work and any other matter which, according to national laws and practice, are considered a term of employment;

(2) It shall not be lawful to derogate from the principle of equality of treatment referred to in paragraph 1 above.

(3) The States Parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner, by reason of any such irregularity.

Article 26. (1) The States Parties to the present Convention recognize the right of all migrant workers and members of their families:

(a) To take part [freely] in [peaceful] meetings and activities of trade unions and of other associations [apart from political parties and organizations] [legally] established for the protection of economic, social, cultural and similar interests [subject only to the rules of the organization concerned];

(b) To join any trade union and any such association as aforesaid [, subject only to the rules of the organization concerned];

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

(2) No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

Article [27. (1) (a) Migrant workers and members of their families shall enjoy equality of treatment with nationals of the receiving State in respect of social security. As regards migrant workers and members of their family who are undocumented or in an irregular situation, States Parties may limit these rights to social security protection arising out of employment or to contributory benefits, [that is, benefits the grant of which depends on direct financial participation by the migrant workers or their employer or on a qualifying period of economic activity.]

(b) Where the application of the preceding paragraph requires the conclusion of multilateral or bilateral agreements, such agreements shall, inter alia, make provision for the maintenance of acquired rights and of rights in the course of

acquisition and for the payment of benefits outside the national territory including provisions for transfer of pension, continuity of social benefits and accumulation of contributive rights. Where such agreements are required, the States Parties to the present Convention shall spare no effort to conclude them.

(c) In so far as migrant workers and members of their families are not specifically entitled to receive contributory social security benefits or to continue to receive such benefits, they shall be entitled to the reimbursement of the whole or such part of the contributions paid as may be appropriate.

(2) Migrant workers and members of their families shall be entitled to claim compensation from an employer for any loss of social security benefits due to his omission to give the notices and to make the payments required by the social security scheme or schemes by which they should normally have been covered.]

Article [28. (1) All migrant workers and members of their families shall have the right to receive any medical care which is urgently required for the preservation of their life or the restoration of their health.

(2) Such emergency medical care shall not be refused to them by reason of any irregularity in their situation or in that of their parents with regard to stay or employment or by reason of the absence of any guarantee as to the payment of the expenses involved.]

Article [29. [Children of all migrant workers shall have the basic right of access to education.] [Access by children of any migrant worker to pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of their own stay in the receiving State.]

Article [30. The irregularity of its own situation or of that of its parents shall not have the effect of depriving a child of its right to a name, to registration, or of the right to a nationality, with a view to reducing cases of statelessness.]

Article [31. The States Parties to the present Convention shall ensure respect for the cultural identity of all migrant workers and their families and shall permit them to maintain their cultural links with their State of origin.]

Article [28. Emergency medical care required for the preservation of the life or the restoration of the health of migrant workers and the members of their families shall not be refused to them by reason of the irregularity of their situation or that of their parents with regard to stay or employment or by reason of the absence of a guarantee as to the payment of expenses involved.]

Article [31. All migrant workers and their families shall enjoy the right to maintain their cultural dignity.]

Article [31. The States Parties to the present Convention shall recognize the right of all migrant workers and their families to maintain their cultural identity.]

Article 32. Upon the termination of their stay in the receiving State all migrant workers and members of their families shall have the right to transfer any savings and to take with them all personal effects, working tools and other belongings.

Article 33. (1) Migrant workers and members of their families shall have the right to be informed by both the State of origin and the State of employment concerning:

(a) Their rights arising out of this Convention;

(b) The conditions of admission, their rights and obligations under the law and practice of the receiving State and such other matters as will enable them to comply with administrative or other formalities in that State.

(2) Each State Party to this Convention shall take the appropriate measures to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, it shall co-operate with other States concerned.

(3) The said information shall be provided to migrant workers and to members of their families, wherever possible free of charge, upon request and in their own language or in a language which they are able to understand.

Article 34. None of the provisions of part II of this Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.
