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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

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 thirty-seventh session of the General Assembly 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 inter-sessional meeting from 11 to 22 May 1981, during the thirty-sixth session of the General Assembly from 12 October to 20 November 1981 and another inter-sessional meeting from 10 to 21 May 1982.

3. By its resolution 36/160 of 16 December 1981, the General Assembly, inter alia, took note of the report 1/ of the Open-ended Working Group during the thirty-sixth session 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 again hold inter-sessional 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 their task during the inter-sessional meetings 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; also invited 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 accordance with paragraphs 3 and 4 of General Assembly resolution 36/160 and prior to the thirty-seventh session of the General Assembly, the Secretary-General transmitted the results obtained during the inter-sessional meetings of the Working Group from 10 to 21 May 1982 to Governments, to competent organs of the United Nations system and to international organizations concerned.

5. In pursuance of General Assembly resolution 36/160, the Working Group met at United Nations Headquarters during the thirty-seventh session of the General Assembly from 18 October to 16 November 1982, under the chairmanship of Mr. Antonio González de León. It held 11 meetings with the participation of delegations from all regions. The observers for the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization also took part in the meetings.

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

(a) Report of the Chairman of the Open-ended Working Group (A/C.3/35/13);

(b) 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);

(c) 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 inter-sessional meetings (A/36/383 and annexes I to XIX);

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

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

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

(g) Report of the Open-ended Working Group on its inter-sessional meetings from 10 to 21 May 1982 (A/C.3/37/1).

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

7. The present report contains exclusive 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 as a proposal.

8. 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.

9. At its inter-sessional meetings in May 1982, the Working Group concluded its first reading of part II of the draft Convention on the understanding that the text which was provisionally agreed upon 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. At the same session the Working Group also concluded its preliminary consideration 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. The preliminary texts of part I on the scope and definitions (arts. 1, 3, 5, 6) as well as the remaining articles of part II (arts. 24-34) appeared in chapter II of document A/C.3/37/1. At that session, the Working Group also had a preliminary exchange of views on the content of part III of the Convention relating to additional rights of migrant workers and members of their families in a regular situation or lawful status.

10. At its first meeting on 18 October, the Working Group decided to undertake consideration of part III of the draft Convention and to conduct its deliberations on the basis of proposals included in document A/C.3/36/WG.1/CRP.1/Add.3 presented by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden and other pertinent proposals submitted by delegations at previous sessions concerning the rights to be recognized only to migrant workers in a regular situation.

Part III - Additional rights of migrant workers and members  
of their families in a [regular situation] [lawful status]

Article 35

11. At its 1st meeting, the Working Group considered a text for article 35 on the basis of proposed article III.1 reading as follows:

"III.1. Migrant workers and members of their families who are in a regular situation as regards their admission, stay and employment or other economic activity, including those whose situation has been regularized, shall enjoy the right set forth in Part III, in addition to those set forth in Part II."

12. During the discussion the representative of the United States suggested the following rewording for the article:

"Migrant workers and members of their families who are in a lawful status in the State of employment as regards their admission, duration of stay, type of employment or other economic activity, and other matters related to their immigration and employment status, including those whose status has become lawful since entry into the State of employment ..."

13. In the course of the debate, the representative of Morocco and other delegations expressed the view that the amendments proposed by the representative of the United States would be difficult for their delegations to accept as they were considered ambiguous, and extremely restrictive in nature, as regards the employment of migrant workers.

14. The representative of the United States suggested use of the phrase "lawful status", stated his reservation as regards the words "in a regular situation" and the words "been regularized" and suggested that if the proposed article were to be approved at the first reading, those words should be kept in brackets. Some delegations expressed their doubts about the words "lawful status" and suggested putting them in brackets, as well as the words "and other matters related to their immigration and employment status", including the words "become lawful since entry into the State of employment", contained in the amendments proposed by the representative of the United States. The representative of the USSR and other delegations suggested putting the words "other economic activity" in brackets, wherever they appear in the draft Convention, pending the final conclusion of part I concerning its scope and definitions. Several representatives found superfluous the three-category distinction made in the course of the debate, between migrant workers in: a regular situation, those in a lawful status and those in a regularized status, on the grounds that part III of the draft Convention does not concern undocumented or migrant workers in an irregular situation.

15. At the same meeting the Working Group provisionally agreed at the first reading on the following text for article 35, taking into account the various oral amendments and suggestions:

"35. Migrant workers and members of their families who are in a [regular situation] [lawful status] in the State of employment as regards their admission, [duration of] stay and [type of] employment [or other economic activity] [and other matters related to their immigration and employment status], as well as those whose [situation has been regularized,] [status has become lawful since entry into the State of employment] shall enjoy the rights set forth in Part III, in addition to those set forth in Part II."

#### Article 36

16. At its 1st and 2nd meetings on 18 and 19 October, the Working Group considered a text for article 36 on the basis of the proposed article III.2 which reads as follows:

"III.2. Each State Party to the present Convention shall be free to determine the criteria for authorizing the admission, stay, employment or other economic activity of migrant workers and members of their families, and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this Convention. Any conditions subject to which the admission, stay, employment or other economic activity of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention."

17. During the discussion, the representative of the Netherlands proposed replacing the words "subject to no limitations other than those provided for in this convention" by the sentence "subject to such limitations as imposed on it by this convention or other rules of international law". The representative of Jamaica and other delegations objected to the inclusion of such a clause in the convention and suggested deleting the words "subject to no limitations other than those provided for in this convention". The representative of the United States proposed to replace the words "criteria for authorizing the admission, stay, employment" by the words "criteria governing the admission, duration of stay, type of employment".

18. At the same meeting, the representative of the United States submitted to the Working Group an alternative text for article 36 reading as follows:

"Nothing in the present Convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment or other economic activity, and all other matters relating to the immigration and employment status of migrant workers and members of their families."

19. At its 2nd meeting on 19 October, the Working Group provisionally agreed to place the entire text of the proposed article 36 in brackets and to reconsider it at its second reading together with the alternative proposal submitted by the representative of the United States and the proposal orally suggested by the Netherlands, also placed in brackets, as follows:

"[36. Each State Party to the present Convention shall be free to establish in its national legislation the criteria covering admission, duration of stay, type of employment [or other economic activity] of migrant workers and members of their families and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this Convention. Any conditions subject to which the admission, stay [and] employment [or other economic activity] of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention.]"

"[36. Nothing in the present Convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment [or other economic activity,] and all other matters relating to the immigration and employment status of migrant workers and members of their families] [subject to such limitations as imposed on it by this Convention or other rules of international law.]"

#### Article 37

20. At its 2nd and 3rd meetings on 19 and 20 October, the Working Group considered a text for article 37 on the proposed article III.3 reading as follows:

"III.3. Before their departure, or at the latest at the time of their admission to the receiving country, migrant workers and members of their families shall be fully informed of all conditions applicable to their admission and particularly those concerning the duration of the stay authorized, employments which they may take up and economic activities in which they may engage as well as of the formalities which they must satisfy and the authorities to whom they must address themselves for any modification of these conditions."

21. During the debate on the article, it was decided to continue, at this stage, to use the term "State of employment" instead of "receiving country". While some delegations expressed their concern over the State's obligation to inform migrant workers, and sought more clarification about the kind of information that migrant workers and members of their families should be entitled to, others expressed their preference to have the sentence reworded to read: "Migrant workers and members of their families shall have the right to be fully informed by the State of origin and the State of employment." The representative of the United States orally proposed replacing the word "formalities" by the words "legal requirements". The representative of Jamaica and other delegations expressed their difficulty in accepting the word "legal". In their view such a word would be too narrow or restrictive inasmuch as migrant workers and members of their families may have to satisfy other requirements which may be different in nature.

22. The representative of the United Kingdom placed her delegation's reservations over the State's obligation to fully inform migrant workers and members of their families. She stressed that the right of migrant workers to be informed should be solely interpreted to direct the migrant worker to the consulate of the State concerned. The delegation of Algeria expressed its concern to the effect that in this or in another part of the Convention it should be clearly stated that States have an obligation to keep the worker appropriately informed.

23. After some informal consultations, and taking into account some suggestions to improve the wording of the text, the Working Group provisionally agreed on the following text for article 37:

"37. Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin and the State of employment of all conditions applicable to their admission and particularly those concerning the duration of the stay authorized, employment which they may take up and economic activities in which they may engage as well as of the requirements which they must satisfy in the State of employment and the authority to whom they must address themselves for any modification of those conditions."

#### Article 38

24. The Working Group considered a text for article 38 of the draft Convention at its 2nd to 6th meetings on 19-22 October, on the basis of the proposed article III.4 which reads as follows:

"III.4. (1) Migrant workers and members of their families shall be fully informed of the length of time during which they may stay in their country of origin or in another country without effect upon the validity of their residence permit in the receiving country.

"(2) Such absence shall be authorized for any period of up to six months, and for a longer period where it is due to the performance of compulsory national service or to other circumstances recognized by the receiving country."

25. At its 2nd meeting on 19 October, after considerable discussion of the proposed article, the Working Group felt that the Chairman should hold further consultations on the article with the co-sponsors and other interested delegations in order to reformulate a compromise text. As a result of those consultations, the Working Group had before it a revised version which read as follows:

"38. (1) Migrant workers and members of their families shall have the right to be fully informed of the length of time during which they may be absent from the State of employment without affecting the validity of the residence and work permit previously granted to them by that State.

"(2) State Parties shall make every effort to authorize such absence for a reasonably long period, taking into account the special needs of migrant workers and members of their families in relation to personal or family matters arising in their State of origin or, in the case of children of migrant workers, their education abroad or circumstances such as the initial performance of compulsory national service."

26. In the course of the consideration of the revised version, the delegation of Morocco suggested reversing the order of the paragraphs of the new revised text for article 38. The representative of the Philippines proposed rewording the revised paragraph (1) as follows:

"Migrant workers and members of their families shall have the right to be fully informed of the length of time during which they may be absent from the State of employment without affecting the validity of their re-entry and stay for the purpose, as previously granted by that State ...".

27. The representative of Turkey suggested that the concept of the "conditions" of temporary absence were as important as the "length of time" and proposed that it be reflected in a rewording of paragraph (1).

28. The representative of the United States suggested the following wording for paragraph (1) of article 38:

"Migrant workers and members of their families shall have the right to be fully informed of the maximum period of time during which they may be absent from the State of employment without effect upon the continuing lawfulness of their stay in the State of employment."

He also suggested deletion of the words "for a reasonably long period ..." in paragraph (2) of the proposed article.

29. The representative of Pakistan suggested replacing the sentence "Migrant workers and members of their families shall have the right to be fully informed of the length of time during which they may be absent from the State of employment" in paragraph (1) by the sentence "Migrant workers and members of their families shall have the right to be temporarily absent from the State of employment under conditions established by that State".

30. The representative of Jamaica suggested rewording the revised version of paragraph (1) as follows: "Migrant workers and members of their families shall have the right to be fully informed of the effect to which absence from the State of employment would have upon the validity of their permission to stay or work, as the case may be ...".

31. As regards the new compromise proposal for article 38, the representative of Italy explained that in view of the difficulty in finding a common standard and a universal binding formulation for paragraph (2), the co-sponsors felt that it would be preferable to simply define a broad goal which States Parties should try to reach and to state in detail the reasons underlying this goal.



32. After a debate on the new proposal, the Working Group decided to resume consultations in order to reach a further compromise.

33. At its 6th meeting on 22 October, the Chairman and the original co-sponsors submitted a second revision for a text for article 38, reading as follows:

"38. (1) Migrant workers and members of their families shall have the right to be fully informed of the length of time and conditions in which they may be absent from the State of employment and of the effect that their absence from the State of employment may have upon the validity of their permission to stay or to work, as the case may be, previously granted to them by that State.

"(2) States Parties shall make every effort to authorize such absence for a reasonably long period, taking into account the needs and obligations of migrant workers and members of their families."

34. The representative of Italy stated that such a formulation constituted an absolute minimum, if the paragraph was intended to serve the interests of migrant workers, as the absences contemplated in the paragraph were those not for a reasonably long period of time, as may be required by the peculiar situation of migrant workers and members of their families. Thus, he felt that a deletion of the words "for a reasonably long period" would defeat the purpose of the article and encourage practices harmful to migrant workers.

35. At the same meeting, the Working Group provisionally agreed at first reading on the second revision of the proposal for article 38. The text, thus agreed, reads as follows:

"38. (1) States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent [for reasonably long periods] without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families [in particular those obligations stemming from their links with the State of origin].

"(2) Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized."

#### Article 39

36. The Working Group considered a text for article 39 of the draft Convention at its 2nd, 3rd and 5th meetings on 19-21 October, on the basis of the proposed article III.5 contained in document A/C.3/36/WG.1/CRP.1/Add.3 which reads as follows:

"III.5. (1) Migrant workers and members of their families in a regular situation shall have the right to liberty of movement in the territory of the receiving State and freedom to choose their residence there.

/...

- "(2) The above-mentioned 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 the other rights recognized in the present Convention."

37. In connection with the proposed article II.5 (1), some delegations suggested that reference should be made more explicitly in that paragraph to the freedom of movement of migrant workers and members of their families. While some delegations proposed to replace the word "residence" in paragraph (1) by the word "domicile", other delegations opposed this change because of the complex implications the word "domicile" would have in their national legislation. Regarding the term "residence", the representative of Italy suggested that the wording of paragraph (1) should be in line with part IV, contained in document A/C.3/36/WG.1/CRP.1/Add.3, where the co-sponsors of that document refer to the term "take up residence in the receiving country". The representative of Spain urged that the word "residence" should be retained; the Working Group should not deviate from the language of article 12 of the International Covenant on Civil and Political Rights. In this connection, the representative of the USSR suggested postponing consideration of article 39 until the Working Group reached part IV of the draft Convention. In this connection also, the representative of the United States suggested that the "freedom to choose their place of residence" be limited to those migrant workers authorized to take up residence. Some delegations expressed reservations about the presence of the term "morals" in paragraph (2), and suggested its deletion.

38. In response to questions raised by some delegations on the terminology generally used in the relevant ILO instruments to translate the concept of freedom of movement, the ILO representative referred to the right to geographical mobility of migrant workers provided for in article 14 (a) of ILO Convention No. 143. In this respect, he stated that the ILO Committee of Experts on the Application of the Conventions and Recommendations has made it clear that the intention of that article was "to proscribe legislative provisions or administrative practices restricting the freedom of movement of foreign workers legally within the territory such as those authorizing them to reside only in a given region or prohibiting their entry to certain areas. He added that article 14 (a), on the other hand, does not prevent the imposition - at least during the preliminary phase - of certain restrictions on access to employment which may have an indirect effect on geographical mobility, such as work permits issued for a given post or employer or permits valid for a given region."

39. At its 5th meeting on 21 October, the Working Group, taking into account various oral amendments, provisionally agreed on the following text for article 39 at its first reading:

"Article 39

"(1) Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to liberty of movement in the territory of the State of employment [and freedom to choose their place of residence there.]

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"(2) The above-mentioned 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 the other rights recognized in the present Convention."

Article 40

40. At its 5th and 6th meetings on 21-22 October, the Working Group considered a text for article 0 on the basis of the proposed article III.6, which reads as follows:

"III.6. (1) Migrant workers and members of their families in a regular situation shall have the right to establish associations, including trade unions, for the promotion and protection of their economic, social, cultural and similar interests.

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

41. In the course of the consideration of this article various delegations expressed the view that in the elaboration of a text for article 40, the Working Group should not deviate from the formulation used in article 8 of the International Covenant on Economic, Social and Cultural Rights, or the terms employed in article 22 of the International Covenant on Civil and Political Rights concerning the right of everyone to freedom of association with others, including the rights to form or join trade unions. With regard to paragraph (1), the delegation of Yugoslavia orally proposed to add the word "occupational" after the word "social", to put a comma at the end of the paragraph after the word "interests", and to add the sentence "including the preservation of their national and cultural identity and links with the State of origin". In addition to the oral amendment by the representative of Yugoslavia, the representative of Turkey, who suggested that consideration of national security and others applied as much to States of origin as to the States of employment, and other delegations proposed to include in that paragraph a clause providing that States parties should collaborate in this respect. Several delegations objected to this inclusion.

42. In this connection, the representatives of Italy, Sweden and France placed on record their reservations concerning the proposal by the delegation of Turkey to add in the article a clause stating that "States parties shall collaborate in this respect". The representative of Italy stressed that the purpose of article 39 is to protect the right to freedom of association for migrant workers despite the limitations in paragraph 2. However, the article is not intended to protect public order in the State of origin, since this has been covered in part II of the draft Convention or dealt with in other instruments. The representative of France pointed out that in his view the co-operation between States of origin and States of employment may eventually take place in the promotion of cultural associations, rather than in the establishment of trade unions.

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43. The delegations of Argentina, Malaysia and Venezuela opposed the reference to the words "right to form trade unions" in paragraph (1) on the grounds that they could not support the establishment of unions based on the national origin of their members in the State of employment which would compete with existing national trade unions and would thus, exclusively, serve the interests of foreign nationals.

44. Regarding paragraph (2), a number of delegations expressed their preference to end that paragraph after the words "those prescribed by law" and to delete the rest of the paragraph.

45. Upon the proposal of the Chairman, the co-sponsors and interested delegations held informal consultations and later submitted a revised text for proposed article 40, which read as follows:

"1. Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to establish, in the State of employment, associations, including trade unions, for the promotion and protection of their economic, social, occupational and cultural interests, including the preservation of their cultural identity and links with the States of origin.

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

46. At its 6th meeting on 22 October, the Working Group considered this revised text.

47. The representative of the United States and other delegations suggested rewording the first sentence of paragraph 1 of proposed article 40 to read: "Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to freedom of association with others in the State of employment". The representative of the United Kingdom suggested deleting the word "associations" in the second line of paragraph (1) and rewording the beginning of the first sentence of that paragraph to read:

"1. Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to freedom of association with others in the State of employment, including the right to form associations and trade unions, ...".

48. The representative of the Netherlands suggested to insert into the text of the second paragraph the full limitations clause as it appears in article 22 of the Civil and Political Rights Covenant: "in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". The representative of Yugoslavia requested that a reference be made to the preservation of the national identity of migrant workers and their families along with their cultural identity. The representative of Morocco proposed that the text of paragraph 1 of

this article should reflect the need to preserve not only national or cultural links of migrant workers and their families but also all types of links. Several delegations expressed their concern about the reference in the text to the concept of "national identity" because of its implications in practice.

49. At the same meeting, the Working Group provisionally agreed on the first reading on the following text for article 40:

"1. Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to freedom of association with others in the State of employment, including the right to form associations and trade unions, for the promotion and protection of their economic, social, occupational, cultural and similar interests, [including the preservation of their [national identity], cultural identity and cultural and other similar links with the States of origin.]

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

#### Article 41

50. The Working Group considered a text for article 41 of the draft convention at its 6th meeting on 22 October, on the basis of the proposed article III.7, which read as follows:

"III.7. State of origin and receiving States shall collaborate with a view to facilitating, without unreasonable restrictions, the exercise by migrant workers and members of their families in a regular situation of the right:

- "(a) To take part in the conduct of public affairs of their country of origin, directly or through freely chosen representatives;
- "(b) To vote and to be elected at elections in their country of origin;
- "(c) To have access, on general terms of equality, to public services in their country of origin."

51. During the consideration of the article the representative of the United States suggested replacing the words "receiving States" in the first sentence of the article by the words "States of employment", and replacing the word "regular situation" by the words "lawful status". The representative of Mexico proposed to replace the words "without unreasonable restrictions," by the words "as provided for in their national legislation". The representative of Greece suggested that the wording of the proposed article III.7 should be as close as possible to the wording of article 25 of the International Covenant on Civil and Political Rights.

52. The representative of Argentina expressed the view that this provision would be more acceptable if it clearly stated that the State of employment would facilitate the exercise of political rights of migrant workers in the States of origin whenever the law of that State provides for such exercise by its nationals living abroad. He stated that the provision should not imply that States of employment could request States of origin to enact new legislation for that purpose.

53. In view of the practical implications of proposed article III.7, the delegations of the United States, India and several other delegations expressed their reservations on the applicability of the proposed article. With respect to subparagraph (c) of proposed article 41, the representative of Morocco expressed her categorical opposition to the reference to the State of employment in connection with access by migrant workers to public services in their country of origin. That would constitute direct interference by a foreign State in the national affairs of the country of origin.

54. The representative of Greece placed on record his reservations on the substance of the proposed article; he objected to any proposal aimed at restricting by the State of employment, the right of migrant workers and members of their families to freedom of expression, to vote and to be elected as well as to participate in the conduct of public affairs in the State of origin, on the grounds that such restrictions would be against the letter and the spirit of the Universal Declaration of Human Rights and of many other relevant international instruments. He further stated that monitoring or censoring the activities of migrant workers and members of their families by the police would be incompatible with the principles of democracy in a democratic State.

55. At the same meeting, the Working Group, because of lack of time, agreed provisionally to retain the entire article, with the proposed amendments in brackets, as follows:

"41. [States of origin and States of employment shall collaborate with a view to facilitating, [without unreasonable restrictions,] [as provided for in their national legislation] the exercise by migrant workers and members of their families in a [regular situation] [lawful status] of the right:

" (a) To take part in the conduct of public affairs of their country of origin, directly or through freely chosen representatives;

" (b) To vote and to be elected at elections in their country of origin;

" (c) To have access, on general terms of equality, to public services in their country of origin.]"

#### Article 42

56. At the 6th meeting, the Working Group also considered a text for article 42 of the draft Convention on the basis of proposed article III.8 which reads as follows:

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- "III.8. (1) The States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in countries of origin and in receiving countries, of the special needs and of the wishes of migrant workers and members of their families.
- (2) Receiving States shall facilitate the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities."

57. During the consideration of the article, various delegations expressed their objections to the inclusion of the word "wishes" in the article on the grounds that it was too broad and too vague. They suggested replacing it by the word "aspirations". With reference to the word "institutions" mentioned in paragraph (1), the representative of the Netherlands suggested that the paragraph should make provisions for migrant workers to have their freely chosen representatives.

58. Also in connection with paragraph (1), various delegations proposed to replace the words "countries of origin and in receiving countries" by the words "States of origin and in the States of employment" and to insert the words "and obligations" after the proposed word "aspirations".

59. Concerning paragraph (2) the representative of the United Kingdom expressed her reservation if the provisions of this paragraph were to be interpreted to mean granting to migrant workers and members of their families the right to vote in local affairs in the State of employment. In the opinion of other delegations, paragraph (2) was unacceptable as drafted because, in their view, it implied that migrant workers would have the right to exercise political rights in the State of employment.

60. In the course of the discussion, the Chairman drew the attention of the Working Group to the substance and formulation of articles 24 and 25 contained in the compilation of proposals made by members of the Working Group and contained in document A/C.3/36/WG.1/WP.1, submitted by Algeria, Barbados, Egypt, Mexico, Pakistan, Turkey and Yugoslavia.

61. At the same meeting the Working Group provisionally agreed, at first reading, on a text for paragraph (1) and decided to retain in brackets two alternatives for paragraph (2) on the basis of proposed article III.8 (2) on the one hand, and the proposed article 24 contained in document A/C.3/36/WG.1/WP.1, on the other hand. It was also agreed to place in brackets a new paragraph (3) on the basis of proposed article 25 of the latter document. The text thus provisionally agreed for article 42 reads as follows:

"42. (1) States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of the special needs, aspirations and obligations of migrant workers and members of their families.

/...

" (2) [States of employment shall facilitate the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.]

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

" (3) [Migrant workers shall enjoy political rights in the State of destination only to the extent that that State, in the exercise of its sovereignty, may grant them such rights.]"

#### Article 43

62. At its 7th, 9th and 10th meetings on 25, 28 and 29 October, the Working Group considered a text for article 43 on the basis of article III.9 which reads as follows:

"III.9. (1) Migrant workers in a regular situation shall enjoy equality of opportunity and treatment with nationals of the receiving State in respect of

" (a) Access to educational facilities and institutions;

" (b) Access to vocational guidance and placement services;

" (c) Access to vocational training and retraining facilities and institutions;

" (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

" (e) Access to social services;

" (f) Access to health services;

" (g) The exercise of trade union rights, including eligibility for office in trade unions, in bodies of an occupational, economic or social character, and in labour-management relations bodies, including bodies representing workers in undertakings;

" (h) Rights of membership in co-operatives and self-managed enterprises.

" (2) The States Parties to the present Convention shall adopt appropriate measures with a view to enabling migrant workers to enjoy the above-mentioned rights."



63. During the discussion of article III.9, at the 7th and 8th meetings on 25 October, some delegations expressed their doubts as to whether the words "in a regular situation" should remain in article 43. Nevertheless, the representative of the United States maintained the words in a "regular situation" in brackets and, after these words, added the words "lawful status" also placed in brackets.

64. The representative of Argentina and some other representatives stated that paragraph 2 was unnecessary because it dealt with a logical corollary to the obligations which every State would assume in becoming a party to the Convention; in any event, such a provision should be general in character and should apply to all the articles. Against this, various delegations proposed retaining paragraph (2) as the chapeau of the article. In this respect, the representative of the Netherlands proposed a formulation of paragraph (1) in the article reading: "(1) States Parties to the present convention shall endeavour to adopt appropriate measures so that migrant workers in a regular situation shall enjoy equality of opportunity and treatment with nationals in the State of employment in respect of ...". The representative of France felt that the words "equality of opportunity" in paragraph (1) might be interpreted too subjectively and proposed to include a new provision after subparagraph (c) reading "access to professional promotion institutions". Regarding subparagraph (a) of paragraph (1) the representative of the United States expressed his concern over the words "educational facilities and institutions". He expressed the view that those terms might be broadly interpreted to include, for instance, military or other government institutions for higher learning or vocational training which are exclusively restricted to nationals in some countries. The representative of Italy stated that, in drafting the proposed article III.9, the co-sponsors did not mean to imply military institutions or intend to grant access to those special institutions to migrant workers. In this respect, various delegations suggested that the drafting of the proposed article 43 could be improved by adding a clause in paragraph (1) stating that migrant workers should enjoy equality of treatment with nationals of the State of employment subject to no limitations other than those provided for in the Convention. Several delegations voiced their concern over subparagraph (h) of paragraph (1) concerning the rights of migrant workers vis-à-vis co-operatives and self-managed enterprises.

65. Upon the proposal of the Chairman, the co-sponsors and interested delegations decided to hold informal consultations with a view to elaborating a revised text which could meet the concerns expressed by a number of delegations.

66. At its 9th meeting on 28 October, the Working Group had before it a revised text for article 43 formulated in consultations with the Chairman, the co-sponsors and other interested delegations which took into account the various suggestions made during the initial debate as well as the provisions of proposed articles III.11 and III.16 contained in document A/C.3/36/WG.1/CRP.1/Add.3. The revised text for article 43 reads as follows:

"43.(1) Migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present convention, [in particular in article 50, para. 3] in respect of

- " (a) Access to educational facilities and institutions;
- " (b) Access to vocational guidance and placement services;
- " (c) Access to vocational training and retraining facilities and institutions;
- " (d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;
- " (e) Access to social and health services, [provided that the requirements for participation in schemes of the State of employment are met;]
- " (f) The exercise of trade union rights, including eligibility for office in trade unions, in bodies of an occupational, economic or social character, and in labour-management relations bodies, including bodies representing workers in undertakings;
- " (g) Access to co-operatives and self-managed enterprises;
- " (h) Access to and participation in cultural life.

" (2) States Parties to the present convention shall endeavour to facilitate effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights, including opportunities for advancement, whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements."

67. The representatives of Finland, Morocco and Turkey expressed their regrets over the revised text. In their opinion, the new version did not reflect the stronger proposals initially made by the co-sponsors. They stressed that the question of equality of treatment is fundamental as it constitutes the corner-stone of the draft Convention.

68. The representative of the United Kingdom and some delegations pointed out that in their views there was a contradiction between paragraphs (1) and (2) of the revised text. The representative of the United States stated that the provisions of the revised text for article 43 were too ambitious and should be broken up by subjects. He also stated that certain parts of the text should be incorporated in other articles. He proposed replacing the words "subject to no limitations other than those provided for in the present convention" by the words "subject to national legislation of the State of employment"; adding the words "subject to the requirements and conditions of the institutions concerned" after subparagraph (a); and adding the words "subject to the resources of the State of employment" after subparagraphs (b) and (c). He also suggested replacing subparagraph (f) by a subparagraph reading: "The exercise of the right of freedom of association with others."

69. In this connection, the representative of Morocco and some delegations objected to the amendments by the United States concerning subparagraphs (a), (b) and (c). The delegation of Morocco stated that provisions relating to equal access of migrant workers with nationals as regards educational facilities and institutions, vocational training and retraining should be maintained in the draft Convention without being subjected to any limitations.

70. The representative of Jamaica, supported by the representative of the United Kingdom, voiced his concern about the terms "subject to no limitations other than those provided for in the present Convention". Instead, he suggested replacing them by the words "subject to the provisions of this Convention". In this respect the representative of the Netherlands proposed an alternative formulation reading "subject to no limitations".

71. In replying to some questions raised during the debate, the representative of the International Labour Organisation commented on the meaning of the terms "access" and "exercise" and pointed out that the inclusion of the word "by nationals" in subparagraph (e) would exclude any possibility of discrimination between migrant workers and nationals as regards access to social and health services. He stated that international conventions cannot be regarded as mere records of national legislation. In the view of the International Labour Organisation they constitute a means of promoting social justice throughout the world.

72. The representative of Jamaica, supported by Turkey and some other delegations, suggested replacing the words "shall endeavour to facilitate effective equality of treatment" by the words "shall promote conditions to ensure effective equality of treatment". The representative of Argentina stated that paragraph 2 added nothing, inasmuch as States, in becoming parties to the Convention, would assume the obligation to take action to ensure its effective implementation, without there being any need for such a provision. The representative of the Philippines placed on record the reservation of her delegation as regards the amendment formulated by Jamaica. She stated that they preferred the wording used in the initial text submitted by the co-sponsors and proposed a deletion of the word "effective". The representative of the United States suggested adding the words "in a lawful situation" after the words "migrant workers". It was agreed to provisionally include them in the paragraph in brackets with the alternative words "in a regular situation" also placed in brackets. The representative of the United States also proposed deleting the words "including opportunities for advancement, whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements" and replacing them by the words "subject to the terms of their stay as authorized in accordance with national legislation in the State of employment". The Working Group agreed to place the proposal in brackets. The representative of the United States placed on record his reservation on the provision of the article and proposed placing the entire article in brackets pending an agreed definition of the term "migrant workers". At the same meeting, it was decided that the Chairman should hold further consultations with the co-sponsors and interested delegations with a view to formulating a further revision of the text in the light of the debate.

73. At its 10th meeting on 29 October, the Working Group had before it, as a result of those consultations, a new revision of the text for article 43. The Working Group decided to retain it in brackets with an alternative proposal, also placed in brackets, submitted by the representative of the United States. The texts of the two alternative proposals read as follows:

"[43.(1) Migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present convention, in respect of

- " (a) Access to educational facilities and institutions;
- " (b) Access to vocational guidance and placement services;
- " (c) Access to vocational training and retraining facilities and institutions;
- " (d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;
- " (e) Access to social and health services, [provided that the requirements for participation by nationals in schemes of the State of employment are met;]
- " (f) The exercise of trade union rights, including eligibility for office in trade unions, in bodies of an occupational, economic or social character, and in labour-management relations bodies, including bodies representing workers in undertakings;
- " (g) Access to co-operatives and self-managed enterprises;
- " (h) Access to and participation in cultural life.

[43.(1) Migrant workers in a [regular situation] [lawful status] shall enjoy [equality of treatment with nationals of the State of employment] [subject to the national legislation of the State of employment] [subject to no limitations other than those provided for in the present convention], [in particular in article 50, para. 2 (a)] in respect of

- " (a) Access to educational facilities and institutions, subject to the admission requirements and other regulations of the facilities and institutions concerned;
- " (b) Access to vocational guidance and placement services, subject to the resources of the State of employment;
- " (c) Access to vocational training and retraining facilities and institutions, subject to the resources of the State of employment;
- " (d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;
- " (e) [Access to social and health services,] [provided that the requirements for participation in schemes of the State of employment are met;]
- " (f) The exercise of the right of freedom of association with others;
- " (g) Access to and participation in cultural life.

/...

"(2) States Parties to the present convention shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]"

"(2) States Parties to the present convention shall endeavour to facilitate effective equality of treatment to enable migrant workers in a lawful status to enjoy the above-mentioned rights subject to the terms of their stay under the national legislation of the State of employment [including opportunities for advancement] [wherever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]"

#### Article 44

74. At its 7th, 8th and 10th meetings on 25 and 29 October, the Working Group considered a text for article 44 on the basis of article III.10, reading as follows:

- "III.10. (1) The States Parties to the present Convention, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall protect the unity of the families of migrant workers in a regular situation.
- "(2) The spouse and minor dependent children shall be authorized to accompany or join the migrant worker and to obtain residence permits of a duration not less than that of the worker. States Parties may make this authorization subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned. The procedure to verify that such conditions are met shall be completed within a reasonable period.
- "(3) In the case of minor dependent children who are married, States Parties may adopt special regulations concerning their admission on the basis of this article.
- "(4) The admission to the country of the other dependent children and of the dependent father and mother of a migrant worker in a regular situation or of the worker's spouse shall be favourably considered when justified on humanitarian grounds."

75. In the course of the discussion, some delegations suggested putting brackets around the words "families of migrant workers" wherever they appear in the article. The representative of Sweden and various other delegations opposed putting those terms in brackets on the grounds that the absence of an agreed definition of the concept of "migrant workers and members of their families" does not justify the necessity of placing those terms in brackets.

76. Regarding paragraph (2) of the article, various delegations felt that the terms "spouse" and "minor dependent children" should be further clarified in the article. The representative of Spain and some delegations suggested retaining the terms "spouse" and "minor dependent children". The representatives of the United States and the United Kingdom reserved their position as regards those terms "spouse and minor dependent children" because they were not yet defined in the draft Convention. They therefore proposed replacing them by the words "the spouse and unmarried minor dependent sons and daughters".

77. The representative of France proposed inserting the words "of migrant workers" after the word "children", in order to emphasize that those provisions concern expressly the wife or husband, as the case may be, as well as the dependent children under the guardianship of the migrant worker. The representative of Sweden suggested that in formulating article 44, account should be taken of the wording of article 12 of the European Convention on the Legal Status of Migrant Workers, to the effect that the spouse and minor dependent children of migrant workers shall be authorized to accompany and join the migrant worker on conditions analogous to those which the European Convention applies to the admission procedure prescribed by such law or by international agreements. The Algerian delegation requested that, in the formulation of article 44, account should be taken of the concept of the family as defined in Muslim law governing the personal status of Algerian nationals.

78. With regard to paragraph (3), the representative of Argentina and some other delegations felt that it was superfluous, therefore they suggested its deletion.

79. At its 10th meeting on 29 October, the Working Group had before it a revised text, elaborated in consultations with the Chairman, the co-sponsors and interested delegations, reading as follows:

"44. (1) States Parties to the present convention, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to protect the unity of the families of migrant workers in a [regular situation] [lawful status].

" (2) The spouse and minor dependent unmarried sons and daughters shall be authorized to accompany or join the migrant worker and to stay in the State of employment for a duration not less than that of the worker, subject to procedures prescribed by the legislation of the State of employment or by international agreements. States of employment may make this authorization subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned. The procedure to verify that such conditions are met shall be completed within a reasonable period.

" (3) States of employment shall favourably consider the admission of other family members on humanitarian grounds."

80. During the consideration of the revised text, the representatives of the Netherlands and Turkey proposed the deletion of the words "recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State". The representative of Argentina stated that the idea of the family as the natural and fundamental group unit of society should be dealt with in a special preambular paragraph, not in the articles of the Convention. The representative of the Netherlands suggested rewording the first sentence of paragraph (1) to read: "States shall take measures for the equal protection of the family of migrant workers and nationals". The representative of the Philippines expressed reservations on the use of the word "spouses" in the plural form instead of in the singular as in the original draft.

81. At the same meeting, the Working Group, taking into account the various proposals made during the debate, provisionally agreed at first reading on a text for article 44, reading as follows:

- "44. (1) States Parties to the present convention [, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,] shall take appropriate measures to ensure the protection of the unity of families of migrant workers in a [regular situation] [lawful status], equal to that given to nationals.
- " (2) Spouses and minor dependent unmarried sons and daughters [of migrant workers] shall be authorized to accompany or join migrant workers and to stay in the State of employment for a duration not less than that of the worker, subject to [procedures prescribed by] the [national] legislation of the State of employment or [applicable] international agreements. States of employment may make this authorization subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned. The process of verifying that such conditions are met shall be completed within a reasonable period.
- " (3) States of employment shall [favourably] consider the admission of other [dependent] family members on humanitarian grounds."

#### Article 45

82. At its 9th and 10th meetings on 28 and 29 October, the Working Group considered a text for article 45 of the draft convention on the basis of proposed article III.11, reading as follows:

- "III.11. (1) Members of the family of migrant workers in a regular situation shall enjoy equality of treatment with nationals of the receiving State in respect of

- " (a) Access to educational facilities and institutions;
- " (b) Access to vocational guidance and training facilities and institutions;
- " (c) Social services;
- " (d) Health services.

" (2) The States Parties shall pursue a policy, where appropriate in collaboration with the countries of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of the teaching of the local language.

" (3) The States Parties shall promote, as far as practicable and in collaboration with other States concerned, courses for the children of migrant workers for the teaching of the migrant worker's mother tongue and culture."

83. The Working Group also had before it a revised text proposed by the Chairman after consultations with the co-sponsors and other interested delegations, which reads as follows:

- "45. (1) Members of the family of migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present Convention, in respect of
- " (a) Access to educational facilities and institutions;
  - " (b) Access to vocational guidance and training facilities and institutions;
  - " (c) Access to social and health services;
  - " (d) Access to and participation in cultural life.
- " (2) States of employment, [provided that the requirements for participation in schemes of the State of employment are met,] shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of the teaching of the local language.
- " (3) States Parties shall endeavour, as far as practicable and in collaboration with States of origin, to facilitate for the children of migrant workers the teaching of their mother tongue and culture."



84. As regards paragraph (2) of the revised article, the representative of the United Kingdom stated that she would have difficulty with the paragraph as it stood. Consequently, she proposed replacing the words "provided that the requirements for participation in schemes of the State of employment are met" by the words "in accordance with their national circumstances and legal systems". Several delegations objected to the proposal by the United Kingdom. The Working Group decided to maintain the revised version of paragraph (2) in brackets, as well as the amendment thereto by the United Kingdom.

85. The representative of Yugoslavia, referring to the implications of the concepts of national identity and equal rights and opportunities, strongly opposed any inclusion in the paragraph of the notion of policies aimed at facilitating the integration of children of migrant workers in the local school system. Instead, she proposed deleting all the words after "aimed at" and replacing them by the words "securing the same rights and opportunities enjoyed by children of the State of employment concerning access to all systems, forms and degrees of education, by facilitating the learning of the local language". The representative of Turkey supported the proposal by the representative of Yugoslavia. A number of delegations voiced their concern about the proposal by the delegation of Yugoslavia. Upon the proposal of the delegation of the Philippines, it was agreed to maintain both proposals in brackets.

86. Regarding paragraph (3) the representative of the United Kingdom proposed inserting the words "where appropriate" before the words "in collaboration". The Working Group agreed to retain this proposal in brackets. The representative of the United States expressed the reservations of his delegation regarding article 45 as a whole.

87. Finally, the Chairman informed the Group that during the informal consultations held in connection with article 45, the participating delegations had agreed to the insertion, tentatively in brackets, of a new paragraph (4) reading as follows:

["4. States of employment shall provide, as far as practicable, special schemes of education in the mother tongue of children of migrant workers at least at the primary level."]

88. At the same meeting the Working Group provisionally agreed at first reading on the following text for article 45:

"45. (1) Members of the family of migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present convention, in respect of

"(a) Access to educational facilities and institutions;

"(b) Access to vocational guidance and training facilities and institutions;

- " (c) Access to social and health services;
- " (d) Access to and participation in cultural life.
- " (2) States of employment, [provided that the requirements for participation in schemes of the State of employment are met,] [in accordance with their national circumstances and legal systems] shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at [facilitating the integration of children of migrant workers in the local school system, particularly in respect of the teaching of the local language] [securing the same rights and opportunities enjoyed by children of the State of employment concerning access to all systems, forms and degrees of education by facilitating the learning of the local language].
- " (3) States of employment shall endeavour, as far as practicable and [where appropriate] in collaboration with States of origin, to facilitate for the children of migrant workers the teaching of their mother tongue and culture.
- " [(4) States of employment shall provide, as far as practicable, special schemes of education in the mother tongue of children of migrant workers, at least at the primary level.]"

#### Article 50

89. Although the Group lacked sufficient time to discuss any provisions of the draft Convention after article 45, at the 10th meeting the co-sponsors felt that it was useful to submit a revised text for article 50, so as to allow Governments to study and take it up at the next session of the Working Group. The text was drafted during informal consultations on the basis of article III.16 and in the light of the deliberations of the Group concerning related provisions (i.e., articles 43, 44 and 45). It reads as follows:

- "50. (1) States of employment shall permit migrant workers in a [regular situation] [lawful status] freely to choose their employment [or other economic activity], subject only to such restrictions or conditions as are authorized by the following paragraphs of this article.
- " (2) States of employment may
  - " (a) restrict access by migrant workers to limited categories of employment, functions services or activities where this is necessary in the interests of the State;
  - " (b) restrict free choice of employment [or other economic activity] in accordance with regulations governing the conditions of recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

- " (c) determine the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. In this connection, account shall be taken of the period during which the worker has already been employed or engaged in work on his own account.
- " (3) In the case of migrant workers in a [regular situation] [lawful status] whose permission to work is limited in time, States of employment may also
  - " (a) make the right of free choice of employment [or other economic activity] subject to the condition that the migrant worker has lawfully worked in its territory for a continuous period not exceeding two years;
  - " (b) limit access by a migrant worker to employment [or other economic activity] in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has lawfully worked for a continuous period exceeding five years;
  - " (c) if the State of employment is a developing country, impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals;

90. At its eleventh meeting on 16 November 1982, the Working Group agreed to postpone consideration of the remaining proposals for part III and the remaining parts of the Convention to its next session. The Working Group also agreed that in order to maintain the pace of its work it would be essential to obtain the necessary services at United Nations Headquarters in order to hold, again, an intersessional meeting of two weeks immediately after the spring session of the Economic and Social Council in New York in 1983. It was also agreed that it would be preferable to obtain the assignment of services for the Group during the first weeks of the thirty-eighth session of the General Assembly.

91. The Working Group thus concluded its work for the present session during which it completed the first reading of articles 35-45 (see text in part II below).

92. At its eleventh meeting on 16 November 1982 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-seventh session.

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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 ON AT A FIRST READING DURING THE THIRTY-SEVENTH SESSION OF THE GENERAL ASSEMBLY 2/ 3/

Article 35

Migrant workers and members of their families who are in a [regular situation] [lawful status] in the State of employment as regards their admission, [duration of] stay and [type of] employment [or other economic activity] [and other matters related to their immigration and employment status], as well as those whose situation has [been regularized,] [become lawful since entry into the State of employment] shall enjoy the rights set forth in part III, in addition to those set forth in part II.

Article 36

[Each State Party to the present Convention shall be free to establish in its national legislation the criteria governing admission, duration of stay, type of employment [or other economic activity] of migrant workers and members of their families and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this Convention. Any conditions subject to which the admission, stay, [and] employment [or other economic activity] of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention.]

[Nothing in the present Convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment or other economic activity, and all other matters relating to the immigration and employment status of migrant workers and members of their families] [subject to such limitations as imposed on it by this Convention or other rules of international law].

Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin and the State of employment of all conditions applicable to their admission and particularly those concerning the duration of the stay authorized, employment which they may take up and economic activities in which they may engage as well as of the requirements which they must satisfy in the State of employment and the authority to whom they must address themselves for any modification of those conditions.

Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent [for reasonably long periods] without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families [in particular those obligations stemming from their links with the State of origin].

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39

(1) Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to liberty of movement in the territory of the State of employment [and freedom to choose their place of residence there.]

(2) The above-mentioned 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 the other rights recognized in the present Convention.

Article 40

1. Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to freedom of association with others in the State of employment, including the right to form associations and trade unions, for the promotion and protection of their economic, social, occupational, cultural and other similar interests, [including the preservation of their [national identity], cultural identity and cultural and other similar links with the States of origin.]

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

Article 41

[States of origin and States of employment shall collaborate with a view to facilitating, [without unreasonable restrictions,] [as provided for in their national legislation] the exercise by migrant workers and members of their families in a [regular situation] [lawful status] of the right:

- (a) To take part in the conduct of public affairs of their country of origin, directly or through freely chosen representatives;
- (b) To vote and to be elected at elections in their country of origin;
- (c) To have access, on general terms of equality, to public services in their country of origin.]

Article 42

(1) States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of the special needs, aspirations and obligations of migrant workers and members of their families.

(2) [States of employment shall facilitate the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.]

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

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

Article 43

[ (1) Migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present convention, in respect of

- (a) Access to educational facilities and institutions;
- (b) Access to vocational guidance and placement services;
- (c) Access to vocational training and retraining facilities and institutions;
- (d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;
- (e) Access to social and health services, [provided that the requirements for participation by nationals in schemes of the State of employment are met;]

[ (1) Migrant workers in a [regular situation] [lawful status] shall enjoy [equality of treatment with nationals of the State of employment] [subject to the national legislat[on of the State of employment] [subject to no limitations other than those provided for in the present convention], [in particular in article 50, para. 2 (a)] in respect of

- (a) Access to educational facilities and institutions, subject to the admission requirements and other regulations of the facilities and institutions concerned;
- (b) Access to vocational guidance and placement services, subject to the resources of the State of employment;
- (c) Access to vocational training and retraining facilities and institutions, subject to the resources of the State of employment;

(f) The exercise of trade union rights, including eligibility for office in trade unions, in bodies of an occupational, economic or social character, and in labour-management relations bodies, including bodies representing workers in undertakings;

(g) Access to co-operatives and self-managed enterprises;

(h) Access to and participation in cultural life.

(2) States Parties to the present convention shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]

(d) Access to housing, [including social housing schemes,] and protection against exploitations in respect of rents;

(e) [Access to social and health services,] [provided that the requirements for participation in schemes of the State of employment are met;]

(f) The exercise of the right of freedom of association with others;

(g) Access to and participation in cultural life.

(2) States Parties to the present convention shall endeavour to facilitate effective equality of treatment to enable migrant workers in a lawful status to enjoy the the above-mentioned rights subject to the terms of their stay under the national legislation of the State of employment [including opportunities for advancement] [wherever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]]

#### Article 44

(1) State Parties to the present convention [, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,] shall take appropriate measures to ensure the protection of the unity of families of migrant workers in a [regular situation] [lawful status], equal to that given to nationals.

(2) Spouses and minor dependent unmarried sons and daughters [of migrant workers] shall be authorized to accompany or join migrant workers and to stay in the State of employment for a duration not less than that of the worker, subject to [procedures prescribed by] the [national] legislation of the State of employment or [applicable] international agreements. States of employment may make this authorization subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned. The process of verifying that such conditions are met shall be completed within a reasonable period.

(3) States of employment shall [favourably] consider the admission of other [dependent] family members on humanitarian grounds.

Article 45

(1) Members of the family of migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present convention, in respect of

- (a) Access to educational facilities and institutions;
- (b) Access to vocational guidance and training facilities and institutions;
- (c) Access to social and health services;
- (d) Access to and participation in cultural life.

(2) States of employment, [provided that the requirements for participation in schemes of the State of employment are met,] [in accordance with their national circumstances and legal systems] shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at [facilitating the integration of children of migrant workers in the local school system, particularly in respect of the teaching of the local language] [securing the same rights and opportunities enjoyed by children of the State of employment concerning access to all systems, forms and degrees of education by facilitating the learning of the local language].

(3) States of employment shall endeavour, as far as practicable and [where appropriate] in collaboration with States of origin, to facilitate for the children of migrant workers the teaching of their mother tongue and culture.

[(4)] States of employment shall provide, as far as practicable, special schemes of education in the mother tongue of children of migrant workers, at least at the primary level.]

Notes

1/ A/C.3/36/10.

2/ For the text of the preamble and articles 7 to 23 of part II of the draft Convention, see chapter 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). For the text of part I (arts. 1, 3, 5, 6) and the remaining articles of part II (24-34), see chapter II of the report of the Working Group during its intersessional meeting in May 1982 (A/C.3/37/1).

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

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THIRD COMMITTEE  
Agenda item 12

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

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

Paragraph 90 should read as follows:

90. At its eleventh meeting on 16 November 1982, the Working Group agreed to postpone consideration of the remaining proposals for part III and the remaining parts of the Convention to its next session. A number of delegations expressed the view that, in order to maintain the pace of its work, it would be essential to obtain the necessary services at United Nations Headquarters, in order to hold, again, an intersessional meeting of two weeks immediately after the first regular session of the Economic and Social Council in New York in 1983 and that it would be preferable to obtain the assignment of services for the Group during the first weeks of the thirty-eighth session of the General Assembly.

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The last sentence of paragraph 76 should read:

The United States proposed replacing them by the words "the spouse and unmarried minor dependent children".

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