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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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. By its resolution 1983/40 of 27 May 1983, the Economic and Social Council, *inter alia*, welcomed the progress made by the Working Group and expressed the hope that substantial progress will be made by the Working Group during its two following meetings to be held in 1983 in accordance with General Assembly resolution 37/170 of 17 December 1982, with a view to completing the drafting of the convention if possible during the thirty-eighth session of the General Assembly.
3. By its resolution 37/170 of 17 December 1982, the General Assembly, *inter alia*, took note of the last reports 1/ of the Working Group and expressed its satisfaction with the substantial progress that the Working Group, during its inter-sessional meetings in May 1982 and its meetings during the thirty-seventh session of the General Assembly, has so far made in the accomplishment of its mandate; decided that, in order to enable it to complete its task as soon as possible, the Working Group should again hold an inter-sessional meeting of two weeks' duration in New York, immediately after the first regular session of 1983 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 Group to continue their task during the inter-sessional meeting to be held in the spring of 1983, as well as to transmit the results obtained in that meeting in order that the General Assembly may consider them during its thirty-eighth session. The General Assembly 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. It also decided that the Working Group should meet during the thirty-eighth session of the General Assembly, preferably at the beginning of the session, 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 37/170, the Secretary-General has transmitted the results obtained during the thirty-seventh session of the General Assembly to Governments, to competent organs of the United Nations system and to international organizations concerned. The present report will be equally transmitted to the General Assembly at its thirty-eighth session.

5. Before its inter-sessional meeting of 1983, the Working Group held the following sessions at United Nations Headquarters: (1) the first session during the thirty-fifth session of the General Assembly, from 8 October to 19 November 1980; (2) a first inter-sessional meeting from 11 to 22 May 1981; (3) a second session during the thirty-sixth session of the General Assembly from 12 October to 20 November 1981; (4) a second inter-sessional meeting from 10 to 21 May 1982; (5) a third session during the thirty-seventh session of the General Assembly from 18 October to 16 November 1982.

6. In pursuance of General Assembly resolution 37/170, the Working Group held an inter-sessional meeting at United Nations Headquarters from 31 May to 10 June 1983, under the chairmanship of Mr. Antonio González de León. It held 15 meetings with the participation of delegations from all regions. Observers for the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the Food and Agriculture Organization of the United Nations and the United Nations Children's Fund also attended the meetings.

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

(a) Report of the Open-ended Working Group during the thirty-seventh session of the General Assembly (A/C.3/37/7 and Corr.1 and 2 (English only));

(b) Suggestions submitted by Finland, Italy, Norway, Portugal, Spain and Sweden (A/C.3/36/WG.1/CRP.1/Add.3-4);

(c) Texts of the preamble and articles of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families which the Working Group provisionally agreed during the first reading (A/C.3/38/WG.1/CRP.2);

(d) Proposals submitted by India (A/C.3/38/WG.1/CRP.3).

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8. For reference the following documents were also available to the Working Group:

(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 and Annexes I to XIX);

(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);

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

(e) 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);

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

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

9. The present report contains exclusively results of discussion in the Working Group during its inter-sessional meeting from 31 May to 10 June 1983 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.

10. 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. 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 text of the preamble, Part I on the scope and definitions (arts. 1, 3, 5, 6), the text of Part II on fundamental human rights of migrant workers and members of their families and Part III on additional rights of migrant workers and members of their families in a regular situation/lawful status (arts. 35 to 45) appeared in document A/C.3/38/WG.1/CRP.2.

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11. At its spring inter-sessional meetings of 1983 the Working Group decided to conclude 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 concerning the rights to be recognized only for migrant workers in a regular situation. After the conclusion of Part III, the Working Group agreed to defer consideration of Part IV on (Provisions applicable to particular categories of migrant workers and members of their families), to a later stage when it would be considered with Part I. It also began consideration of proposals for Part V (Promotion of sound and equitable conditions for international migration of workers and their families).

12. At the first meeting on 31 May 1983, the representative of the United States stated his delegation's reservation on articles 44 and 45 provisionally agreed upon by the Working Group during his absence in the course of the thirty-seventh session of the General Assembly. The representative of the United States stated that if he had been present he would have proposed, and will propose during the second reading, that the words "equal to that given to nationals" in paragraph 1 of article 44 be placed in brackets, that article 45 be dealt with in the same manner as article 43 had been, and that the entire text of article 45 should be bracketed, with an alternate text submitted by the United States also in brackets. The representative of the United States, supported by the representative of the Netherlands also expressed difficulties with the Working Group's inability to date to reach agreement on the basic definitions to be used throughout the Convention, particularly the lack of an agreed definition for the term "migrant worker".

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

Article 46

13. At its 1st, 4th and 5th meetings, the Working Group considered a text for article 46 on the basis of proposed article III.12 reading as follows:

"III. 12. At the time of their admission to the territory of the receiving country or of the regularization of their situation, migrant workers and members of their families in a regular situation shall enjoy exemption from customs duties in respect of their personal effects and in respect of portable hand-tools and portable equipment of the kind normally required for the carrying out of their trade or occupation."

14. During the consideration of this article, the representative of the United States asserted that the terms "portable tools" and "hand tools" were too specific for an international instrument of this type and suggested that they should be replaced by broader language such as "equipment necessary to perform the trade or occupation for which they are admitted to the State of employment". In this connection, while replying to certain questions raised, the representative of the ILO referred to articles 2 and 3 of Annex III of the ILO Convention (No. 97)

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concerning Migration for Employment where "personal effects" and "portable hand tools and portable equipment owned by workers" are used. The representative of Italy proposed to use a wording closer to article 7 of the European Convention on the Legal Status of Migrant Workers, such as "personal effects and movable property". The representative of the United States proposed including in the article a clause stating "subject to the laws and regulations in force in the States concerned". Various delegations felt that the words "subject to the law ..." would be too restrictive, and they expressed their preference for the terms "in accordance with applicable laws and regulations ...". After some discussion on the article the Chairman of the Working Group and some delegations held informal consultations and submitted a new text for article 46 reading as follows:

"At the time of their admission to the State of employment, [or of regularization of their situation] migrant workers and members of their families shall, in accordance with the applicable laws and regulations, enjoy exemption from customs duties in respect of their personal effects and in respect of the equipment necessary to perform the trade or occupation for which they had been admitted to the State of employment."

15. During the consideration of the text, the representative of the United States suggested placing the words "shall enjoy exemption" in brackets, if other delegations insisted on bracketing "subject to the applicable laws and regulations of the State of employment".

16. The Chairman and consulted delegations suggested including a second paragraph reading as follows:

"The same exemption to migrant workers and members of their families shall be accorded by the State of return at the time of their return."

17. In the course of the discussion various delegations raised doubts as to whether questions pertaining to exemption from customs duties in respect of personal effects and household goods should be maintained in part III of the Convention. While some delegations felt that it would be more appropriate to include these matters in Part II or Part V of the Convention, others expressed the need to have a definition of the words "personal effects" and "household goods" in the State of employment.

18. The representative of Argentina stated that there should be a general safeguard clause whereby States would provide legislation or regulation to this end.

19. At its 5th meeting, after a lengthy discussion, the Working Group provisionally agreed to retain the new text for article 46 and the alternative proposal by the United States in brackets. The alternative texts proposed for article 46 read as follows:

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"46. [(1) At the time of their admission to the territory of the State of employment or of the regularization of their situation, migrant workers and members of their families in a regular situation shall enjoy exemption from customs duties in respect of their personal effects and in respect of portable hand-tools and portable equipment of the kind normally required for the carrying out of their trade or occupation.]

[(2) The same exemption to migrant workers and members of their families shall be accorded by the State of return at the time of their final return.]"

#### Article 47

20. At its 1st, 4th and 5th meetings, the Working Group considered a text for article 47 of the draft Convention on the basis of proposed article III.13, which read as follows:

"III. 13. The States Parties to the present Convention shall, as far as possible and in accordance with the arrangements laid down in their legislation and applicable agreements, authorize and provide facilities for the transfer to the country of origin or the country of normal residence of migrant workers and members of their families of such parts of their earnings and savings as they may wish to transfer. The transfer of sums required for the maintenance of members of the migrant worker's family shall on no account be prevented or restricted."

21. During the consideration of the article most delegations recognized its crucial importance. The representative of Argentina and other delegations felt that the proposed text by entitling migrant workers the right to transfer funds from the country of employment to another country might give certain privileges to migrant workers over the nationals of the State of employment. In this connection, the representative of the United States and the representative of Turkey pointed out that currency flowing from one country into another is a complex matter which is constantly changing and is subject to specific currency regulations. The representative of the United States proposed to draft the article as follows:

[At the time of their initial admission to the territory of the State of employment, migrant workers and members of their families shall, subject to the applicable laws and regulations of the State of employment as well as relevant international agreements, enjoy exemption from customs duties in respect of the equipment necessary to perform the trade or occupation for which they are admitted to the State of employment.]

"Subject to their applicable currency laws and regulations and in accordance with relevant international agreements, the States Parties to the present Convention shall facilitate the transfer of earnings and savings of migrant workers in a regular situation from the State of employment to other States, in particular the transfer of the sums necessary for the basic sustenance of the migrant worker's family."

22. Various delegations expressed their objection to such a proposal because of the restrictions it put upon the right of migrant workers to transfer their earnings or savings and expressed their preference for the term "in accordance with existing regulations". The representative of Greece felt that clarification should be made on who will determine the amount of funds that will be necessary for the support of migrant workers' families. The representative of Morocco formally proposed that the principle of the right of migrant workers to freely dispose of their earnings and savings should be clearly stated in article 47. The representative of Morocco, supported by the representatives of Jamaica, Algeria, India and the Philippines, suggested starting the article with a chapeau, recognizing, on the one hand, the right of migrant workers to dispose of their earnings and savings and, on the other hand, that States should facilitate the transfer of their earnings and savings.

23. The representative of Jamaica proposed formulating the text as follows:

"States Parties recognize the right of migrant workers to transfer to any country their earnings or parts of their earnings for the maintenance of members of the migrant worker's family and shall, in accordance with relevant rules and regulations and applicable agreements, authorize the transfer of such earnings or parts thereof."

24. The representative of Algeria suggested replacing the proposed text for the article by the following:

"States Parties to this Convention recognize the right of migrant workers to have full control of all income from their work, including the right to transfer any part of their earnings and savings to the countries of origin and of habitual residence. To the extent possible, States Parties shall, under their national legislation and taking into account any applicable agreements, facilitate such transfers and the transfer of the sums needed for the maintenance of members of the families of migrant workers."

25. The representative of Greece submitted an alternative text reading as follows:

"The States Parties to the present Convention shall, in accordance with the arrangements stated in their legislation and those applicable to agreements, authorize and facilitate the transfer, to their country of origin or to the country of normal residence of migrant workers and members of their families, parts of their earnings and savings as they may be necessary for the maintenance of members of the migrant worker's family. Provided that no outstanding legal reasons exist, no other restrictions whatsoever shall be placed on the transfer of the migrant worker's earnings and savings to the country of destination at the time when he leaves the country of employment."



26. Prior to its 5th meeting, informal consultations were held between the Chairman and some delegations. As a result of those consultations and in an attempt to reach a compromise text, a revised text for article 47 was circulated to the Working Group. The revised text read as follows:

"Migrant workers shall have the right to transfer outside of the State of employment their earnings and savings, in particular those funds which are necessary for the support of their families in their State of origin or normal residence. States of employment shall facilitate such transfer in accordance with modalities established by law."

27. At its 5th meeting, the Working Group provisionally agreed to retain the original proposal for article 47 and to place it in brackets together with an alternative proposal by the representative of the United States, also in brackets as follows:

"47. [The States Parties to the present Convention, shall as far as possible and in accordance with the arrangements laid down in their legislation and applicable agreements, authorize and provide facilities for the transfer to the country of origin or the country of normal residence of migrant workers and members of their families of such parts of their earnings and savings as they may wish to transfer. The transfer of sums required for the maintenance of members of the migrant worker's family shall on no account be prevented or restricted.]"

[Migrant workers shall have the right, subject to applicable currency laws and regulations, to transfer their earnings and savings from the State of employment to other States, in particular those funds necessary for the support of their families, and States of employment shall take appropriate measures to facilitate such transfers in accordance with procedures established by law.]

#### Article 48

28. The Working Group considered a text for article 48 of the draft Convention at its 2nd meeting on 31 May, on the proposed article III.14 reading as follows:

"III. 14. Subject to agreements on double taxation, migrant workers and members of their families shall not be liable to taxes, duties or charges of any description whatsoever higher or more onerous than those imposed on nationals in similar circumstances. They shall be entitled, under conditions no less favourable than those applicable to nationals, to deductions or exemptions from taxes or charges and to all allowances, including allowances for dependants."

29. During the consideration of the article, various delegations raised their concern about the double taxation which migrant workers may face. In this connection, the representative of the Federal Republic of Germany, proposed adding the words "and to national laws and regulations", after the words "Subject to

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agreements on double taxation, ..."; he suggested replacing the words "in similar circumstances" by the words "in the same circumstances". Further, the representative of the Federal Republic of Germany supported by the representative of the United States proposed deleting the second sentence of the article, as its provisions may raise further complications since they may be applied in some countries and not in others. In the course of the debate reference was made to article 23 of the European Convention on the Legal Status of Migrant Workers, which contains provisions on taxation on earnings.

30. At the same meeting, the Working Group decided to keep the second sentence of the proposed article in brackets and provisionally agreed at the first reading on the following text for article 48 as follows:

"48. Subject to agreements on double taxation, migrant workers and members of their families shall not be liable to taxes, duties or charges of any description whatsoever higher or more onerous than those imposed on nationals in similar circumstances. [They shall be entitled, under conditions no less favourable than those applicable to nationals, to deductions or exemptions from taxes or charges and to all allowances, including allowances for dependants.]"

#### Article 49

31. The Working Group considered a text for article 49 of the draft Convention at its 2nd, 4th, 5th and 6th meetings on 31 May, 2-3 June, on the basis of article III.15 which read as follows:

"III. 15. If a work permit or an authorization to engage in economic activity is granted only for a given period, authorization of residence shall be granted for at least the same duration. If a worker loses his employment, this shall not in itself imply the withdrawal of his authorization of residence, or, as the case may be, his work permit. He shall be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefits."

32. Following a general discussion on the proposed article, various delegations expressed their dissatisfaction with the wording of the article. Some delegations felt that the article should be discussed in the light of the provisions of article 50 as it appeared in document A/C.3/37/7. After informal consultations, the co-sponsors and other interested delegations, taking into account some suggestions to improve the wording of the text, circulated a revised text for article 49 reading as follows:

"(1) Where a separate authorization to reside is required by national legislation, the States of employment shall issue to migrant workers authorization to reside for at least the same period of time as their authorization to engage in employment [or other economic activity]."

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"(2) Without prejudice to article 36 of the present Convention, migrant workers shall neither be regarded as in an irregular situation, nor shall they lose their authorization to reside, by the mere fact of the loss of employment [or the termination of their economic activity] prior to the expiry of their working permits or similar authorizations.

"(3) In order to allow migrant workers sufficient time to find alternative employment, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits."

33. During the consideration of this proposal, the representative of the United States suggested including in the first paragraph a clause specifying that "This provision does not apply to frontier workers". The representative of Sweden and other delegations objected to the proposal by the United States because this part of the draft Convention is exclusively dealing with migrant workers in a regular situation or lawful status, which implies that they have a residence permit. The representative of Sweden further pointed out that special provisions concerning frontier workers were being foreseen in the proposed Part IV of the Convention, or other words to that effect. They suggested putting it in brackets. The representative of France proposed replacing the words "where a separate authorization to reside is required" by the words "where and when a separate authorization to reside is required".

34. Regarding paragraph (2) of the proposal, the representative of the Federal Republic of Germany, supported by the representative of the United States, proposed putting the whole paragraph in brackets or starting the sentence as follows: "In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer ...". The representative of the Federal Republic of Germany also suggested to insert the words "as a rule" after the word "nor", in the second line of paragraph (2). The representatives of Sweden, Norway and Spain objected to the proposal of the Federal Republic of Germany and the United States which they found regressive vis-à-vis already existing instruments and stated that the provisions of the article do not concern the freedom to choose or change of employment. In replying to some questions raised in relation to the provisions of the article, the representative of the International Labour Organisation referred to similar provisions in paragraph (1) of article 8 of ILO Convention 143, whereby it is stated that "On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence, or as the case may be, work permit".

35. As concerns paragraph (3) of the proposal, the representative of the United States suggested inserting the words he had proposed for paragraph (2) above after the words "migrant workers" on the first line. The representative of India placed his reservation on record that in those countries where employment benefits schemes are not available, it would be useful to indicate a reasonable time-limit so as not to give the impression that migrant workers will not be entitled to such facilities as envisaged in the paragraph.

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36. At its 6th meeting, after considerable discussion, the Working Group provisionally agreed to retain in brackets, the following the text for article 49:

"49. (1) [Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization to reside for at least the same period of time as their authorization to engage in employment [or other economic activity]. [This provision does not apply to frontier workers.]

(2) [In States of employment where migrant workers are free to choose any type of employment for any employer] without prejudice to article 36 of the present Convention, migrant workers shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the loss of employment [or the termination of their economic activity] prior to the expiry of their working permits or similar authorizations.

[(3) In order to allow migrant workers referred to in paragraph (2) above sufficient time to find alternative employment, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits.]]"

#### Article 50

37. At its 6th meeting, the Working Group had before it a text for a new article 50 submitted by the Chairman after consultation with various delegations. The Working Group agreed that the text of former article 50, which appeared in document A/C.3/37/7, would become article 51 of the draft Convention. For the text of article 51 see paragraph 39 below. The new article 50 read as follows:

#### "New article 50

"(1) Without prejudice to Article 36 of the present Convention, loss of employment shall not in itself imply the withdrawal of the authorization to work.

"(2) Migrant workers shall accordingly enjoy equality of treatment with nationals, particularly in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining during the remaining period of their authorization to work."

38. During the consideration of this proposal the representative of the United States proposed beginning paragraph (1) of the article as follows: "In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer ...". He also proposed to delete paragraph (2). The representative of the Federal Republic of Germany suggested inserting the words "as a rule" after the word "employment" in paragraph (1) of the article. He stated that he could not accept a general obligation concerning equality of treatment with nationals with regard to free access to the labour market, since in accordance with certain national laws and

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international agreements priority is given to nationals and to migrant workers from the European Community. However, he felt those migrant workers who have a stabilized status with regard to their work permit may have free access. After some discussion, the Working Group provisionally agreed at first reading to place the entire article 50 in brackets together, as follows:

"[50. (1) Without prejudice to article 36 of the present Convention, loss of employment shall not in itself imply the withdrawal of the authorization to work.

"[In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer, loss of employment shall not in itself imply the withdrawal of the authorization to work, without prejudice to article 36 of the present Convention.]"

"(2) Migrant workers shall accordingly enjoy equality of treatment with nationals, particularly in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining during the remaining period of their authorization to work.]"

#### Article 51

39. The revised text proposed in document A/C.3/37/7, formerly article 50, read as follows:

"51. (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;"

40. The representative of the Federal Republic of Germany put his observations on record saying that the question under which conditions a State of employment should settle the free choice of employment or the free access to the labour market cannot be answered generally in a sufficient way for all States concerned. The interests of the States concerned and the requirements of their labour markets differ too much in order to find a solution to these problems in a world-wide applicable convention which is adequate for all States. It seems therefore more realistic to realize the principle expressed in the chapeau of article 51 - free choice of employment for all migrant workers - in a general way and to permit national legislation as well as bilateral and multilateral agreements by implementing the principle to take into account the necessary exemptions by which States concerned should be enabled to react in a more flexible way both to the justified interests of their national labour markets and the social interests of migrant workers, in particular of those migrant workers who do not yet have a stabilized status with regard to their work permit. He stated that the same approach should be taken with regard to the access to employment of members of the families of migrant workers provided in article 52, and the same observations should apply to articles 53 and 54.

41. With regard to article 51, the representative of the United States expressed the view for the record that the differences between the text proposed in document A/C.3/37/7 and the alternate text proposed by the Federal Republic of Germany and the United States are generally self-explanatory and stem from the fact that some States admit migrant workers only for a limited period of time to perform a specific job or type of employment for a specific employer. He maintained that the legal regime in such States cannot be reconciled with draft article 51's requirement that States of employment permit migrant workers in a regular situation to enjoy free choice of employment. Primarily for that reason, he asserted, an



alternate text for article 51 was necessary which, inter alia, would make clear that the article is applicable only in States where migrant workers enjoy free choice of employment or employer. He added that the same considerations applied to article 52 on employment of family members of migrant workers and to article 54 on the exercise of certain occupations and professions by migrant workers.

42. The observer of the ILO explained that the ILO Convention 143 concerning migration in abusive conditions and the promotion of equality of opportunity and equality of treatment of migrant worker, adopted in 1975, provides for completely free choice of employment already after a period of two years or less. Article 14 (a) of the said Convention makes the free choice of employment "subject to the conditions that the migrant worker has resided lawfully ... for a prescribed period not exceeding two years or (where) laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract".

43. At its 6th meeting, the Working Group decided to retain the entire original proposal for article 51 in brackets together with an alternative proposal submitted by the representatives of the Federal Republic of Germany and the United States, also in brackets, as follows:

"[51. (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;

"[51. In States of employment whose laws and regulations provide that migrant workers lawfully present may freely choose their employer or employment after a certain period of lawful employment, only the restrictions or conditions set forth in the following paragraphs of this article shall be applicable:

"(1) A State of employment may:

"(a) restrict access by migrant workers to certain categories of employment and certain geographical regions where this is provided by national laws and regulations;

"(b) restrict free choice of employment in accordance with its laws and regulations concerning recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

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"(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;]

#### Article 52

44. At its 3rd meeting, the Working Group considered a text for article 52 on the basis of proposed article III.17 reading as follows:

"(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 to work on his own account.

"(2) In the case of migrant workers lawfully in the territory of a State of employment whose permission to work is limited in time, a State of employment may in addition to the provisions of paragraph one:

"(a) make the right of free choice of employment and employer subject to the condition that the migrant worker has lawfully worked in its territory continuously for a prescribed period;

"(b) limit access by a migrant worker to employment 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 continuously for a prescribed period;

"(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.]

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"III. 17. (1) The spouse and children of a migrant worker whose authorization of residence or admission is without limit of time shall be permitted free choice of employment [or other economic activity] under the same conditions as are applicable to the migrant worker in accordance with Article 51.

"(2) In respect of the spouse and children of any migrant workers admitted in accordance with Article 44, the States Parties to the present Convention shall pursue a policy aimed at granting priority in respect of employment or other economic activity over other workers who seek admission to the receiving country."

45. At its 6th meeting, the Working Group provisionally agreed to place the entire text of the proposed article in brackets together with an alternative text submitted by the representatives of the Federal Republic of Germany and the United States, as follows:

"[52. (1) The spouse and children of a migrant worker whose authorization of residence or admission is without limit of time shall be permitted free choice of employment [or other economic activity] under the same conditions as are applicable to the migrant worker in accordance with article 51.

"(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 44 the States Parties to the present Convention shall pursue a policy aimed at granting priority in respect of employment or [other economic activity] over other workers who seek admission to the receiving country.]"

#### Article 53

46. At its 3rd and 6th meetings, the Working Group considered a text for article 53 on the basis of the proposed article which read as follows:

"III. 18. Migrant workers as defined in Article 2 (1) (a) who are in a regular situation shall, in addition to the rights provided for in Articles 25 and 43, enjoy equality of treatment with nationals of the receiving State in respect of

- "(a) Security of employment;
- "(b) Access to relief work organized by a public authority;
- "(c) Subject to any conditions or restrictions imposed in pursuance of Article 51 the provision of alternative employment in the event of loss of work; in that event they shall be given priority over other workers who seek admission to the receiving country."

47. During the consideration of this text, some delegations expressed the views that the article should begin with a qualifying chapeau. The representatives of the Federal Republic of Germany and the United States expressed their difficulties with the term "security of employment". The representative of Spain emphasized that foreign migrant workers should not lose employment in circumstances based on discriminatory factors. As regards the term "enjoy equality of treatment with nationals", the representative of the United States explained that his objection to the article was not related to the question of nationality of migrant workers but to the fact that the article was completely incompatible with the legal system in some States of employment where the lawful status of some or all migrant workers is dependent upon performing a specific job for a specific employer, as authorized by the competent governmental authorities. He suggested that the article begin with a chapeau reading "In States of employment where migrant workers are free to choose or change employment or employers". In replying to some questions raised by some delegations, the representative of the ILO pointed out that the words reading "without prejudice to the terms of their authorization of residence ..." had been used in analogous contexts in ILO instruments.

48. At its 6th meeting, the Working Group pending further consideration of part I provisionally agreed at first reading on a text for article 53 as follows:

"[53. Without prejudice to the terms of their authorization of residence, migrant workers as defined in Article 2 (1) (a) who are [in a regular situation] [lawful status] shall, in addition to the rights provided for in articles 25 and 43, enjoy equality of treatment with nationals of the receiving State in respect of

- "(a) Security of employment;
- "(b) Access to relief work organized by a public authority;
- "(c) Subject to any conditions or restrictions imposed in pursuance of Article 51, the provision of alternative employment in the event of loss of work; in that event they shall be given priority over other workers who seek admission to the receiving country.]"

#### Article 54

49. At its 3rd meeting, the Working Group considered a text for article 54 on the basis of proposed article III.19 reading as follows:



"III. 19. Migrant workers as defined in Article 2 (1) (b) who are in a regular situation, shall be entitled to equality of treatment with nationals of the receiving State in the exercise of their occupation or profession."

50. At its 6th meeting, the Working Group provisionally agreed, pending further consideration of Part I, to place the entire article in brackets together with an alternative proposal by the Federal Republic of Germany and the United States, as follows:

"[54. Migrant workers as defined in article 2 (1) (b) who are in [a regular situation] [lawful status] shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession.]"

"[54. Migrant workers as defined in article 2 (1) (b) who are in a regular situation, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession, except as provided otherwise by the laws and regulations of the State of employment.]"

#### Article 55

51. At its 5th and 7th meetings, the Working Group considered a text for article 55 on the basis of article III.20 reading as follows:

"III. 20. (1) States Parties shall apply the following provisions to migrant workers in a regular situation who have been admitted to the receiving country for a period of time on the basis of a work contract with an enterprise or employer carrying out in that country specific projects that by their nature are limited in time:

"(a) The said migrant workers shall be admitted and authorized to work for the entire period of time required for the carrying out of the duties or assignments concerned;

"(b) The receiving country shall facilitate the installation by the enterprise carrying out the specific project of any necessary facilities for the said migrant workers and their families, such as housing, schools, medical and recreational services. The application of this provision shall not entail additional costs for the receiving State, unless this is provided for in specific agreements;

"(c) Subject to any provisions contained in specific agreements, the said migrant workers shall have the right to have their earnings paid in or transferred to their country of origin or the country of their normal residence;

"(d) The said migrant workers shall be entitled to be accompanied or joined by the spouse and dependent children for the duration of their duties or assignments, in accordance with Article 44, paragraphs (1) and (2), except where this is not possible on account of considerations of safety.

"(2) The provisions of Articles 35 to 42, Article 43, paragraph 1 (e) to (g), Article 46, Article 48 and Article 56 shall also apply to the said migrant workers. The other provisions of Part III shall not apply to them.

"(3) Subject to the provisions of this Convention applicable to the said migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific provisions on social and economic matters relating to these migrant workers."

52. During the consideration of the article, the representatives of France, Morocco, India, Algeria, Sweden and other delegations noted that the provisions of article 55 covered a very particular category of migrant workers employed by foreign enterprises or their subsidiaries which is becoming increasingly important and that the article in itself was introducing a new topic which was rather complex in its nature. Therefore, these provisions should be studied in depth.

53. The representative of Sweden proposed adding the words "or subcontracts relating thereto" after the words "specific project" in paragraph (1).

54. The representative of the United States sought clarification over the sentence "shall facilitate the installation by the enterprise ..." in subparagraph (b). He suggested starting the paragraph with a phrase reading "At no cost to the State of employment, unless provided for in specific agreements, the State of employment shall take appropriate measures to facilitate any required administrative processing of proposals by an enterprise or employer ...". He also proposed inserting the words "admitted and authorized to work for an appropriate period".

55. The representative of the Federal Republic of Germany proposed replacing the word "entire" by the word "appropriate" in subparagraph (a) and pointed out that subparagraph (d) was not acceptable to his delegation. The representative of Greece proposed substituting the words "duration of their contracts" for "duration of their duties or assignments" in subparagraph (d).

56. The representative of Morocco proposed deleting the word "additional" in subparagraph (b) as well as the words "except where this is not possible on account of consideration of safety in subparagraph (d)", and rewording paragraph (3). Various delegations agreed that there should be in the Convention a definition of the period of time when migrant workers are not in a position to work.

57. The representative of Algeria declared regarding the article that it seems necessary that the convention should enshrine equality of treatment in all fields for all migrant workers, irrespective of their type or level of professional skill, and not enshrine rights arising out of an unjust international economic order based on the business cycle.



58. The representative of Italy stressed in this regard that the object of the Convention is to grant basic rights to all migrant workers, and that article 55 deals with a category of workers of increasing importance for international economic co-operation.

59. After some discussion on the article, the representative of Italy submitted a revised text for a chapeau for article 55 prepared by the co-sponsors as follows:

"States parties shall apply the following provisions to migrant workers who are employed by foreign enterprises or their subsidiaries and are lawfully admitted to the State of employment for a defined period for the execution [in that State] [in its territory] by said enterprises or their subsidiaries, directly or in joint ventures, of specific projects which by their nature are limited in time."

60. Many delegations felt that the substance of article 55 had some connection with the proposals submitted for Part IV of the Convention which deals with particular categories of migrant workers, a part that had not yet been considered by the Working Group, therefore at its 7th meeting, the Working Group agreed to postpone consideration of article 55 to a later date and to take it up together with Part IV.

#### Article 56

61. At its 7th meeting the Working Group considered a text for article 56 on the basis of proposed article III.21 reading as follows:

"III. 21. (1) Migrant workers and members of their families in a regular situation may not be expelled from a receiving country except

"(a) For reasons of national security, public order, or morals;

"(b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;

"(c) If a condition essential to the issue or validity of their authorization of residence or work permit is not fulfilled.

"(2) Any such expulsion shall be subject to the procedural safeguards provided for in Part II of this Convention."

62. The representative of France expressed the wish that, at the time of the consideration of the present article, the corresponding meaning of the English term "expulsion" be clarified, in relation to the French words "refoulement", "reconduite à la frontière" and "expulsion".

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63. The representative of the United States proposed including in the article a separate subparagraph stating "in accordance with applicable laws and regulations of the State of employment".

64. The representative of Greece proposed replacing paragraph (2) by a paragraph reading as follows:

"Before any such expulsion or deportation be carried out, all fundamental rights of the migrant workers must be legally safeguarded."

65. At the same meeting the Working Group provisionally agreed to retain the entire article in brackets as follows:

["56. (1) Migrant workers and members of their families in [a regular situation] [lawful status] may not be expelled from a receiving country except

"(a) For reasons of national security, public order, or morals;

"(b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;

"(c) If a condition essential to the issue or validity of their authorization of residence or work permit is not fulfilled.

["(d) In accordance with the applicable laws and regulations of the State of employment.]

"(2) [In accordance with applicable laws] any such expulsions shall be subject to the procedural safeguards provided for in part II of this Convention.

"[(3) Before any expulsion or deportation be carried out, all fundamental rights of migrant workers must be legally safeguarded.]"]

66. The Working Group thus concluded consideration of Part III (Additional rights of migrant workers and members of their families in a regular situation or lawful status). It agreed to postpone consideration of migrant workers and members of their families) to a later stage and to take up Part V of the Convention (Promotion of sound and equitable conditions for international migration of workers and their families).

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Part V: Promotion of sound and equitable conditions for international migration of workers and their families

67. At its 8th meeting, the Working Group began consideration of Part V of the draft Convention on the basis of suggestions submitted by Finland, Italy, Norway, Portugal, Spain and Sweden, together with the position paper submitted by the co-sponsors (A/C.3/36/WG.1/CRP.1/Add.3 and 4). In presenting these proposals the representative of Italy explained that their purpose was to ensure that States parties to the Convention would co-operate to promote conditions in which international migration would take place in an orderly manner with a view to preventing and correcting situations which may lead to infringements upon rights of migrant workers. He stressed the need for States parties to create appropriate bodies for dealing with the problems posed by the migratory flow, to provide certain services, and to prevent and suppress illegal and clandestine movement.

68. With respect to the original suggestions, several members of the Working Group raised a number of questions and made suggestions concerning the scope and purpose of Part V. There was a divergence of views on whether the provisions of this Part should apply to all States or only to States of origin and employment and on whether they should encompass all migrant workers or only those in a regular situation. A number of proposals in this connection were made, including some regarding the title of Part V.

69. The representative of the United States opposed what he considered too broad a formulation, since in his view, Part V imposed obligations on States parties with regard to illegal migrant workers. Stressing that the general thrust of Part V should be to promote lawful international migration, he proposed an alternative formulation for the title of this part, as follows:

"Promotion of humane and equitable conditions for migrant workers and their families during international migration in accordance with applicable laws and regulations."

Article 62

70. The proposed text for article 62 in document A/C.3/36/WG.1/CRP.1/Add.3 read as follows:

"V.1. Without prejudice to the provisions of Article 36, regarding the freedom of each State to determine the criteria for authorizing the admission, stay, employment or other economic activity of migrant workers and members of their families, the States Parties to the present Convention undertake to collaborate with other States concerned with a view to promoting sound and equitable conditions for international migration of workers and their families. In this respect due regard should be paid not only to short-term manpower needs and resources but also of the long-term social and economic consequences for migrants as well as for the communities concerned."

71. Concerning the text of article 62, the United States representative proposed the following alternative:

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"Without prejudice to the provisions of article 36, regarding the freedom of each State to determine the criteria for authorizing the admission, duration of stay, type of employment of migrant workers and members of their families, the States of employment shall consult and co-operate with other States concerned with a view to promoting equitable conditions for migrant workers and their families during international migrations in accordance with applicable laws and regulations. In this respect due regard should be paid not only to short-term manpower needs and resources but also to the long-term social, economic, political, cultural and other consequences for migrant workers in a regular situation, as well as for the States concerned."

72. The representative of Jamaica proposed to replace in the title the word "promotion" by "provision" and to delete the word "sound" before "equitable". He also suggested the deletion of the qualifying phrase beginning with "Without prejudice ..." in the first sentence of article 62. He further stressed the need to identify which States were meant by "other States concerned".

73. The representative of India proposed the following formulation for the title of Part V:

"Provisions for the promotion of sound and equitable conditions for international migration and steps for the protection of the rights of all migrant workers and their families."

74. The representative of Morocco, supported by others, proposed that the order of articles in Part V be altered, placing articles 66 and 67 at the beginning in order to reflect that this part should not be interpreted as applying also to undocumented migrant workers. The representative of Turkey, while not objecting to reordering of articles, expressed that it should not be understood as restricting the remaining articles to lawful migrant workers only. Other delegations opposed the reordering of articles.

75. The representative of Sweden stated that specific provisions concerning the rights of migrant workers were already contained in Parts II and III of the draft Convention and that the intention of the co-sponsors of Part V had been to deal with the migratory process in itself. Therefore, in his view, Part V contained an appeal to take measures covering all migrant workers, including those in an irregular situation.

76. The representatives of Italy and France also stressed that the purpose of Part V was to create or promote basic conditions for international migrations, such as to ensure that the rights of migrant workers are respected and protected. They felt that it was therefore particularly important that Part V address also the situation of illegal migrant workers, because illegal migrations are inherently unsound and lead to inequitable situations, detrimental to the workers themselves and to the States concerned. However, they said that Part V did not directly recognize any new right for migrant workers, but simply contained instrumental provisions for the implementation of the rights provided for in other parts of the Convention. In order to dispel any possible doubt, they proposed, following a suggestion by the Chairman, to include, as initially proposed by Algeria, Mexico, Pakistan, Turkey and Yugoslavia in document A/C.3/35/WG.1/CRP.7, an additional

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provision to the effect that the text might not allow any interpretation to enhance illegal migration.

77. The Working Group then agreed to suspend consideration of the title and article 62 of the draft Convention until completion of the other articles of Part V.

#### Article 63

78. At its 9th to 11th meetings, the Working Group considered a text for article 63, on the basis of the proposed article V.2, which read as follows:

"V.2. (1) The States Parties to the present Convention undertake to establish and maintain appropriate services to deal with questions concerning international migration of workers and their families. The functions of these services shall include:

- "(a) The formulation of policies regarding such migration;
- "(b) Exchange of information and collaboration with the authorities of other countries involved in such migration;
- "(c) The provision of information, particularly to employers and workers and their organizations, on policies, laws and regulations relating to migration, on agreements concluded with other States on migration for employment, and on conditions of work and life of migrant workers and members of their families in the receiving countries;
- "(d) The provision of information and assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, exit and return to their country of origin or the country in which they are normally resident;
- "(e) The provision of appropriate services for migrant workers and their families;
- "(f) The provision or promotion of facilities to advance knowledge of the language or languages of the receiving country.

"(2) The States Parties to the Convention shall collaborate to provide appropriate consular services and other services to meet the migrants' social and cultural needs in countries where there are significant numbers of migrant workers who are nationals of the State concerned."

79. In the course of the discussion, the representatives of Morocco and the United States said that article 63 should not be applicable to undocumented migrant workers, as it might otherwise encourage illegal migration. The representative of the Dominican Republic expressed the view that the rights of migrant workers were

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not sufficiently protected in the proposed formulation. In reply to a number of reservations, the representatives of Italy and Sweden stressed that the article was not intended to spell out the rights of migrant workers, which was the aim of other parts of the Convention, but to indicate the functions of the various governmental agencies which would formulate policy and provide services with regard to all kinds of migration. They emphasized that the purpose of the article, and indeed of Part V of the Convention, was to request States to establish the appropriate machinery for carrying out the obligations undertaken under the Convention.

80. With regard to paragraph (1) of article 63, the representative of the Dominican Republic, supported by other delegations, proposed that the words "undertake to establish and maintain" in the first sentence be replaced by "shall maintain". The representative of Egypt proposed the formulation "establish and/or maintain". Several delegations expressed reservations regarding the word "services". The representative of Morocco suggested to use the terms "ministerial departments" or "bodies". The representative of the United States suggested the words "government agencies". The representative of Sweden suggested the words "administrative machinery" and the representative of Italy favoured the word "bodies". Concerning the second sentence of paragraph (1), the representative of Egypt suggested the addition of the words "inter alia" at the end. The Chairman suggested to replace the word "shall" by "may" in order to meet the concerns expressed by some delegations concerning the subparagraphs of paragraph (1). The co-sponsors, however, expressed preference for the retention of the word "shall".

81. Regarding the subparagraphs of paragraph (1), the representative of Egypt proposed the deletion of subparagraph (a) on the ground that formulation of policy is an act of sovereignty outside the scope of an international convention. The representative of the United States supported the proposed deletion, or alternatively, proposed the addition of the words "as well as recommending laws and regulations in this area" at the end of subparagraph (a). For subparagraph (b), the representative of the United States proposed that "collaboration" be replaced by "consultation and co-operation" and that "competent" be inserted before "authorities". Several delegations expressed doubts with regard to subparagraphs (c) and (d), in particular concerning their relationship to article 33 of the draft Convention. The representative of the United States favoured deleting the two subparagraphs and amending article 33 at second reading, so as to take into account some of the provisions contained in these subparagraphs. The representative of France suggested the insertion of the word "stay" after "arrival" in subparagraph (d). The representative of Egypt, supported by other delegations, suggested the deletion of subparagraph (e) as redundant to the introductory part of paragraph (1). The representative of the United States proposed the deletion also of subparagraph (f) unless its provisions were clearly made to apply only to regular migrant workers and were further qualified in other respects.

82. With regard to paragraph (2) of article 63, several delegations expressed doubts as to the nature of the obligations thereby imposed on States parties.

83. The representative of Italy stated that the proposal carried an invitation to States to co-operate in order to make possible the establishment of the appropriate

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services for migrant workers. In an attempt to meet the concerns expressed, the Chairman suggested that the word "shall" could be replaced by "should" and the words "in particular" be inserted before "in countries where". The representative of India suggested that the word "appropriate" before "consular services" be replaced by "adequate". The representative of the United States proposed to delete paragraph (2). At the proposal of the Chairman, the Working Group agreed to conduct informal consultations on article 63. The result of these consultations was communicated by the Chairman at the 10th meeting, where the following formulation was considered:

"(1) The States parties to the present Convention shall maintain appropriate government agencies and other services to deal with questions concerning international migration of workers and their families. Their functions shall include, inter alia:

- (a) (unchanged)
- (b) Exchange of information, consultation and co-operation with the competent authorities of other countries involved in such migration;
- (c) (unchanged)
- (d) The provision of information and assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, exit and return to their State of origin or the State in which they are normally resident;
- (e) and (f) were deleted.

New (e) Other measures which are necessary to facilitate the implementation of the present Convention.

(2) The States parties to the present Convention shall co-operate in the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families."

84. With regard to this new proposal, some delegations again expressed doubts regarding the words "government agencies". The representative of the United States expressed the view that the words "and other services" were too broad and should be deleted. He also proposed to replace the word "shall" before "include" by "should". The representative of Italy, on behalf of the co-sponsors of the original proposal, stressed the importance of retaining the words "and other services" in order to cover the deletion of subparagraphs (e) and (f) and to maintain the necessary flexibility of approach.

85. As noted above, the representative of the United States favoured shifting the important elements of subparagraphs (c) and (d), but proposed to revise those paragraphs, if they were to be retained by the Working Group, in article 63, as follows:

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- (c) add the words "and employment" after "relating to migration" and the words "and other relevant topics" after the words "for employment", and replace the words "receiving countries" by the words "States of employment".
- (d) add the word "employment" after the word "stay"; replace the words "country of origin or the country in which they are normally resident" by the words "State of return"; add the words "as well as information on customs, currency, tax and other relevant laws and regulations".

86. In the light of the explanation given by the representative of Italy that subparagraph (c) referred to States and their social partners, the representative of Morocco objected to the use of the words "and workers". She contended that States could not be expected to provide each prospective national worker with information on the agreements they had concluded with other States. That would have no concrete effect on the welfare of migrant workers. Several alternative formulations in this respect were proposed by delegations in the ensuing discussion without reaching a decision. With regard to the new subparagraph (e) the representative of the United States proposed the following alternative formulation:

"(e) the recommending of legislation, regulations and other measures which are necessary to facilitate implementation of the present Convention and to deal with matters relating to international migration and migrant workers".

87. Concerning paragraph (2) the representative of the United States expressed the view that it was still too broad and objected to the inclusion of the words "and other services to meet the migrants' social and cultural needs" and proposed the deletion of subparagraph (2).

88. The Working Group then provisionally agreed to retain at first reading subparagraph (d) as reformulated in the course of informal consultations and further amended by the United States. It also provisionally agreed to retain subparagraph (e) and the alternative proposal submitted by the representative of the United States, also in brackets.

89. At the proposal of the Chairman, the Working Group agreed to conduct further consultations regarding the remaining subparagraphs of article 63. The result of these informal consultations was communicated to the Group at its 11th meeting.

90. At the same meeting, the Working Group provisionally agreed at first reading on a text for article 63, as follows:

"63. (1) The States Parties to the present Convention shall maintain appropriate government [agencies] [institutions] [entities] [and promote other services] to deal with questions concerning international migration of workers and their families. Their functions [shall] [should] include, inter alia:

- (a) The formulation of policies regarding such migration;

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- (b) Exchange of information, consultation and co-operation with the competent authorities of other States involved in such migration;
- (c) [The provision of information, [particularly to employers and their organizations as well as [to workers and] worker's organizations] on policies, laws and regulations relating to migration and employment, on agreements concluded with other States on migration for employment and other relevant topics and on conditions of work and life of migrant workers and members of their families in the States of employment;]
- (d) The provision of information and assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, employment [and other economic activities] exit and return to the State of return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations;

[(e) Other measures which are necessary to facilitate the implementation of the present Convention.]

[(e) The recommending of legislation, regulations and other measures which are necessary to facilitate the implementation of the present Convention and to deal with matters relating to international migration and migrant workers.]

[(2) The States Parties to the present Convention shall co-operate in the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families.]"

91. At its 11th meeting, the Working Group considered a text for article 64 on the basis of proposed article V.3, reading as follows:

"V.3. (1) Subject to the following paragraph, the right to undertake operations with a view to the recruitment or placing of workers in employment in another country shall be restricted to

- (a) Public services or bodies of the country in which such operations take place;
- (b) Public services or bodies of the receiving country, if authorized by agreement between the States concerned;
- (c) A body established by virtue of a bilateral or multilateral agreement.

(2) National laws and regulations and bilateral or multilateral agreements may also permit the said operations to be undertaken, subject to the approval and supervision of the authorities of the country concerned, by

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(a) The prospective employer or a person in his service acting on his behalf;

(b) Private agencies."

92. During the discussion of the article, the representative of the United States suggested merging provisions contained in paragraphs (1) and (2) into a single paragraph and substituting the words "the authorities of the country concerned" by the words "the competent authorities of the State concerned". The representative of Italy agreed with the last change proposed by the United States. As regards the merging of paragraphs (1) and (2) he pointed out that there is a great difference between the ideas contained in paragraphs (1) and (2) of the article.

93. During the debate the attention of the Working Group was drawn to some proposals submitted by the delegation of India, in document A/C.3/38/WG.1/CRP.3, for inclusion in Part V of the Convention, reading as follows:

"V.3A Each contracting Party shall inspect or provide for inspection of the conditions of work of migrant workers in the same manner as for national workers, with a view to ensuring that working conditions are in keeping with standards of safety and health and principles of human dignity. Such inspection shall be carried out by the competent bodies or institutions of the State of employment and by any other authority so authorized by other respective State authorities.

V.3B Each contracting Party shall ensure that the competent national authorities, acting within their competence, carry out inspections to ensure that standards of fitness of accommodation and other living conditions are kept up for migrant workers as for its own nationals. In appropriate cases, such inspections shall be carried out in collaboration with the respective consular authorities.

V.3C Each contracting Party shall within the framework of its laws, bilateral or multilateral agreements, provide all help and assistance necessary for the transport to the State of origin of the bodies of the deceased migrant workers as a result of an accident from their employment or other economic activity.

V.3D The States Parties would take appropriate steps in according recognition to educational and vocational qualifications acquired in States other than the State of employment. Arrangements for such recognition may be provided for, wherever necessary, in bilateral and/or multilateral agreements on equivalence of diplomas, degrees and other vocational qualifications."

94. The representative of India expressed the view that Part V, as proposed in document A/C.3/36/WG.1/CRP.1/Add.3, was formulated in very broad and general terms and stressed the need for more specific provisions. In this respect, he introduced his own suggestions (document A/C.3/38/WG.1/CRP.3), which dealt with obligations on the part of States parties to ensure protection of rights pertaining to living and working conditions.

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95. In the course of the general debate on Part V, a number of delegations commented on the suggestions of the co-sponsors of A/C.3/36/WG.1/CRP.1/Add.3 and those of the representative of India. In the view of various delegations, some of the suggestions made by India were already regulated by bilateral agreements while others overlapped with existing international instruments, such as those prepared in the framework of UNESCO. In this connection, the representative of UNESCO provided information concerning the relevant activities of that organization in this context.

96. The representatives of Turkey, the United States, Argentina, Sweden and France felt that it would be more appropriate to consider the proposals by India either in connection with Part II or Part III of the Convention. Thus, they suggested postponing consideration of the proposal to the second reading of the Convention. The representative of India, supported by the representatives of Morocco and Jamaica, held the view that as the proposals dealt with the obligation of States, they could as well be discussed under Part V of the Convention. Nevertheless the Working Group agreed to defer consideration of the proposals to the second reading of the Convention, with a view to ascertaining whether those proposals could be more appropriately covered under Parts II or III of the Convention.

97. At its 13th meeting, the representative of Greece, after informal consultations with other delegations, submitted a revised text for article 64, reading as follows:

"In conformity with national laws and regulations and in accordance with bilateral or multilateral agreements, the States parties to the present Convention agree that the recruitment or placement of workers in employment in another State may be carried out by:

- (a) Governmental bodies of the State in which such recruitment takes place;
- (b) Governmental bodies of the State of employment;
- (c) A body established by virtue of a bilateral or multilateral agreement;
- (d) A prospective employer or a person in his/her service, or private agencies, provided that any required approval and supervision for such operations is solely granted by the appropriate competent authorities of the State concerned."

98. During the discussion of this revised text, the representative of Italy proposed rewording the chapeau of the text as follows:

"The recruitment or placement of workers in employment in another State may be carried out in conformity with national laws and regulations and in accordance with international agreements solely by:"

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99. The representative of the United States suggested replacing the words "in accordance with" by the words "subject to" in the chapeau, and maintaining the sentence "provided that any required approval and supervision for such operations are granted by appropriate competent authorities of the State concerned" in paragraph (d). The representative of France explained his difficulties in accepting the words "recruitment" and "placement" in the same article. He proposed putting the word "placement" in brackets. In this connection the observer of the ILO referred to ILO Convention 96 dealing specifically with the question of recruitment. The Chairman drew the Working Group's attention to article 3 of Annex I of ILO Convention 97.

100. The representative of France proposed that, at first reading, the Working Group retain an alternative formulation which would be closer to proposed article V.3 and to the similar provisions already existing in international instruments, and where the words [or placement] would be put in brackets.

101. After further discussion, the Working Group provisionally agreed to retain a text for article 64 on the basis of a proposal by Greece in brackets and the original proposal, suggested as an alternative by the representative of France, also in brackets, as follows:

"[64. The recruitment [or placement] of workers for employment in another State may be carried out [in conformity with] [subject to] national laws and regulations and in accordance with applicable international agreements [solely] by:

(a) Governmental bodies of the State in which such recruitment takes place;

[(b) Governmental bodies of the State of employment;]

(c) A body established by virtue of a bilateral or multilateral agreement;

(d) A prospective employer or a person in his/her service, or private agencies, provided that [any required] approval and supervision for such operations is [solely] granted by the appropriate competent authorities of the State concerned.]

[V.3. (1) Subject to the following paragraph, the right to undertake operations with a view to the recruitment [or placing] of workers in employment in another country shall be restricted to

(a) Public services or bodies of the country in which such operations take place

(b) Public services or bodies of the receiving country, if authorized by agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement.

(2) National laws and regulations and bilateral or multilateral agreements may also permit the said operations to be undertaken, subject to the approval and supervision of the authorities of the country concerned, by

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(a) The prospective employer or a person in his service acting on his behalf;

(b) Private agencies.]"

#### Article 65

102. At its 11th meeting, the Working Group considered a text for article 65 on the basis of proposed article V.4 reading as follows:

"V. 4. The States Parties to the present Convention shall collaborate with other States concerned in measures to facilitate the return of migrant workers and members of their families to their country of origin or of normal residence and their reintegration in that country when they decide to return or their authorization of residence in the receiving country is not extended."

103. During the discussion on the article, a number of delegations recognized the importance of the question of the return of migrant workers and the co-operation of the States concerned. In that connection, the representative of Yugoslavia emphasized the need for co-operation between the State of employment and the State of return with a view to facilitating social and economic reintegration and employment of migrant workers and members of their families in the State of return. To that effect, she suggested the inclusion, at the end of the said article, of a clause stating that "This co-operation shall be subject to bilateral and/or multilateral agreements between the States concerned." The representative of the United States considered the term "re-integration" as used in the article to contemplate inappropriate involvement by States of employment in the resettlement of migrant workers and members of their families in the State of return. He stated that the reintegration of migrant workers should not be a joint obligation and suggested that the words "reintegration in that country" should be put in brackets or deleted. The representative of France pointed out that the French words "reinsertion" and "rapatriés" as proposed do not reflect the ideas intended in the English text of the article and that a better wording for those terms should be sought. He suggested starting the article as follows: "States of employment and States of return, Parties to the present Convention, shall collaborate with a view to ...". He pointed out that the term "re-establishment" has been used in many articles and may be used in the article under consideration. In this connection, the representative of Morocco said that she found appropriate the use of the word "readaptation" in this context. The representative of the Dominican Republic suggested to replace the word "residence" by the word "stay".

104. The representative of Jamaica proposed beginning the article by the words "States of employment shall collaborate with States of return or any other State ...". The representative of Turkey observed that the issue of return of migrant workers was a vital question, the important aspects of which should be addressed by the Convention. The representative of Algeria supported the inclusion in that article of provisions relating to the establishment of co-operation among States parties, or other States concerned, with a view to facilitating the return of migrant workers and members of their families and their economic, social and cultural reintegration in their country of origin, when they voluntarily decided to return permanently. The representative of Italy explained that the co-sponsors in

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drafting the article intended only to tackle the question of return in broader terms without delving into specific aspects of the matter.

105. At its 12th meeting, and after informal consultations, the Chairman and delegations submitted a revised text for further consideration by the Working Group as follows:

"In this respect, States concerned may agree on specific measures and modalities for the easing of the process of final return and, whenever possible, the promotion of appropriate economic conditions in the State of return."

States parties in the present Convention shall co-operate in the adoption of measures regarding the orderly return of migrant workers and their families to the State of return and their re-establishment in that State, when they decide to return or their authorization of residence or employment expires, or when they are in the State of employment in an irregular situation."

106. In view of the number of alternative proposals or texts and the lack of time for their discussion, the Working Group had decided to defer consideration until its next session.

#### Article 66

107. At its 12th and 13th meetings, the Working Group considered a text for article 66 on the basis of proposed article V.5 reading as follows:

"V. 5. The States Parties to the present Convention, including countries of transit, shall collaborate with a view to preventing and suppressing illegal or clandestine movements and illegal employment of migrant workers. The measures to be taken to this end within the jurisdiction of each State concerned shall include

- (a) Measures to prevent and suppress misleading information relating to emigration and immigration;
- (b) Measures to detect illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons who organize, operate or assist in organizing or operating such movements;
- (c) Measures to detect illegal employment of migrant workers and to impose effective sanctions on persons or undertakings illegally employing migrant workers;
- (d) Measures to impose effective sanctions on persons who use violence, threats or intimidation against migrant workers or members of their family."

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108. During the discussion on this proposal, the representative of Mexico expressed her concern over the notion of presenting and suppressing, in the chapeau of the proposed article, since it would impose serious restrictions upon the freedom of movement of persons and their rights to leave their own country. She therefore submitted that the aim of the article could not go beyond clandestine movements of migrant workers. The representatives of Turkey, India, Jamaica, Algeria, the Dominican Republic and other delegations also expressed their opposition to the word "suppressing" in the chapeau. They proposed replacing it by words such as "discouraging", "curbing" or "combating". The representative of Sweden, supported by the representative of France, drew the attention of the Working Group to certain declarations and relevant instruments of the United Nations and other international organizations where the expression "suppress clandestine movement of migrants for employment" is used. The representative of France further stated that he was opposed to the deletion of the word "suppressing". That would be a retrograde step away from certain declarations and recommendations adopted by international bodies and certain international instruments already existing in that area. In this context, the representative of the ILO pointed out that the suppression and prevention of clandestine movements of migrant workers and their illegal employment was a priority concern of Convention 143, whose Part I was entirely devoted to migrations in abusive conditions.

109. The representative of the United States stated that the article should not use the ambiguous term "illegal employment" but should rather refer to "employment of migrant workers in an irregular situation. In addition he asserted that the subject of international migration and employment should be dealt with separately, so that article 66 would concentrate on questions of international migration and would not address internal matters such as employment, which would be covered in article 67. Further, he suggested that the general problems addressed in subparagraph (d) are covered in Part II of the Convention and should only be incorporated into subparagraph (b) with respect to illegal traffickers in migrant workers, so that the two subparagraphs would merge into a single subparagraph. He also maintained that the question of imposing sanctions on employers of undocumented workers was a matter exclusively within the jurisdiction of the State of employment and should not be discussed in article 66. In subparagraph (a), he proposed setting a higher standard for government involvement in suppressing information by replacing the words "misleading information" with the words "fraudulent information".

110. The representatives of India and France expressed their difficulties in accepting the word "fraudulent" as it would have a restrictive connotation as a prefix for the word "information". The representative of Greece proposed to insert the words "and suppress" after the word "detect" in subparagraphs (b) and (c). The representative of France expressed his preference for the terms "tendre à supprimer" in French. He also said that the article should also include the question of "illegal residence" in subparagraph (b). Most delegations agree that the words "shall collaborate" in the chapeau should be interpreted to mean "shall co-operate". The representative of Turkey felt that subparagraph (d) could be formulated to read:

"(d) Measures to detect employment by persons or enterprises of migrant workers in an irregular situation and to deal with them appropriately, while safeguarding those rights recognized to such workers by the present Convention."

111. At its 13th meeting, the Working Group owing to lack of time agreed to postpone consideration of this article to its next session.

112. At the same meeting the representative of Sri Lanka proposed a text for consideration in the future sessions of the Group and for inclusion in Part V of the Convention. The text read as follows:

"The State of origin and the State of employment of migrant workers shall ensure and guarantee human rights and dignity of all migrant workers by maintaining close bilateral relations and framing such conventions, procedures and mechanisms that will guarantee justice and equality of treatment to migrant workers and their families."

113. The Working Group agreed that at its next session it would devote itself to pending matters and deal with Part V, including those proposals which were considered in the context of Part II and which should be more appropriately placed in Part V. The Working Group decided as well to review Part I with a view to attempting to make progress on the definitions and scope of the Convention.

114. At the same meeting the Working Group adopted the present report.

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 ITS SPRING INTER-SESSIONAL MEETING OF 1983

Article 46

[(1) At the time of their admission to the territory of the State of employment or of the regularization of their situation, migrant workers and members of their families in a regular situation shall enjoy exemption from customs duties in respect of their personal effects and in respect of portable hand-tools and portable equipment of the kind normally required for the carrying out of their trade or occupation.]

[At the time of their initial admission to the territory of the State of employment, migrant workers and members of their families shall, subject to the applicable laws and regulations of the State of employment as well as relevant international agreements, enjoy exemption from customs duties in respect of the equipment necessary to perform the trade or occupation for which they are admitted to the State of employment.]

(2) [The same exemption to migrant workers and members of their families shall be accorded by the State of return at the time of their final return.]



Article 47

[The States Parties to the present Convention shall, as far as possible and in accordance with the arrangements laid down in their legislation and applicable agreements, authorize and provide facilities for the transfer to the country of origin or the country of normal residence of migrant workers and members of their families of such parts of their earnings and savings as they may wish to transfer. The transfer of sums required for the maintenance of members of the migrant worker's family shall on no account be prevented or restricted.]

[Migrant workers shall have the right subject to applicable currency laws and regulations, to transfer their earnings and savings from the State of employment to other States, in particular those funds necessary for the support of their families, and States of employment shall take appropriate measures to facilitate such transfers in accordance with procedures established by law.]

Article 48

Subject to agreements on double taxation, migrant workers and members of their families shall not be liable to taxes, duties or charges of any description whatsoever higher or more onerous than those imposed on nationals in similar circumstances. [They shall be entitled, under conditions no less favourable than those applicable to nationals, to deductions or exemptions from taxes or charges and to all allowances, including allowances for dependants.]

Article 49

(1) Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in employment [or other economic activity]. [This provision does not apply to frontier workers].

(2) [In States of employment where migrant workers are free to choose any type of employment for any employer] without prejudice to article 36 of the present Convention, migrant workers shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the loss of employment [or the termination of their economic activity] prior to the expiry of their working permits or similar authorizations.

[(3) In order to allow migrant workers referred to in paragraph (2) above sufficient time to find alternative employment, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits.]

Article 50

[(1) Without prejudice to article 36 of the present Convention, loss of employment shall not in itself imply the withdrawal of the authorization to work.

[In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer, loss of employment shall not in itself imply the withdrawal of the authorization to work without prejudice to article 36 of the present Convention.]

(2) Migrant workers shall accordingly enjoy equality of treatment with nationals, particularly in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining during the remaining period of their authorization to work.]

Article 51

(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.

[51. In States of employment whose laws and regulations provide that migrant workers lawfully present may freely choose their employer or employment after a certain period of lawful employment, only the restrictions or conditions set forth in the following paragraphs of this article shall be applicable:

(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;

(1) A State of employment may:

(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;

(a) restrict access by migrant workers to certain categories of employment and certain geographical regions where this is provided by national laws and regulations;

(b) restrict free choice of employment in accordance with its laws and regulations concerning 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 workers 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;]

(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 to work on his own account.

(2) In the case of migrant workers lawfully in the territory of a State or employment whose permission to work is limited in time, a State of employment may in addition to the provisions of paragraph one:

(a) make the right of free choice of employment and employer subject to the condition that the migrant worker has lawfully worked in its territory continuously for a prescribed period;

(b) limit access by a migrant worker to employment 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 continuously for a prescribed period;

(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.]

#### Article 52

[(1) The spouse and children of a migrant worker whose authorization of residence or admission is without limit of time shall be permitted free choice of employment [or other economic activity] under the same conditions as are applicable to the migrant worker in accordance with article 51.

(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 44, the States Parties to the present Convention shall pursue a policy aimed at granting priority in respect of employment or [other economic activity] over other workers who seek admission to the receiving country.]

[52. (1) If specifically authorized by the State of employment, the spouse and children of a migrant worker lawfully present in the State of employment shall be permitted to engage in employment;

(2) In respect of the spouse and children of any migrant worker admitted in accordance with article 44 the States Parties to the present Convention shall, subject to national laws and regulations and applicable bilateral and multilateral agreements, consider granting priority in respect of employment over other workers who seek admission to the State of employment.]

#### Article 53

[Without prejudice to the terms of their authorization of residence, migrant workers as defined in Article 2 (1) (a) who are [in a regular situation] [lawful status] shall, in addition to the rights provided for in articles 25 and 43, enjoy equality of treatment with nationals of the receiving State in respect of

(a) Security of employment;

(b) Access to relief work organized by a public authority;

(c) Subject to any conditions or restrictions imposed in pursuance of Article 51, the provision of alternative employment in the event of loss of work; in that event they shall be given priority over other workers who seek admission to the receiving country.]

#### Article 54

[Migrant workers as defined in article 2 (1) (b) who are in [a regular situation] [lawful status] shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession.]

[54. Migrant workers as defined in article 2 (1) (b), who are in a regular situation, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession, except as provided otherwise by the laws and regulations of the State of employment.]



Article 56

- [(1) Migrant workers and members of their families in [a regular situation] [lawful status] may not be expelled from a receiving country except
- (a) For reasons of national security, public order, or morals;
  - (b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;
  - (c) If a condition essential to the issue or validity of their authorization of residence or work permit is not fulfilled.
- [(d) In accordance with the applicable laws and regulations of the State of employment.]
- (2) [In accordance with applicable laws] any such expulsion shall be subject to the procedural safeguards provided for in Part II of this Convention.
  - (3) Before any expulsion or deportation be carried out, all fundamental rights of migrant workers must be legally safeguarded.]]

Part V: Promotion of sound and equitable conditions for international migration of workers and their families

Article 63

- (1) The States Parties to the present Convention shall maintain appropriate government [agencies] [institutions] [entities] [and promote other services] to deal with questions concerning international migration of workers and their families. Their functions [shall] [should] include, inter alia:
- (a) The formulation of policies regarding such migration;
  - (b) Exchange of information, consultation and co-operation with the competent authorities of other States involved in such migration;
  - (c) [The provision of information, [particularly to employers and their organizations as well as [to workers and] worker's organizations] on policies, laws and regulations relating to migration and employment, on agreements concluded with other States on migration for employment and other relevant topics and on conditions of work and life of migrant workers and members of their families in the States of employment;]
  - (d) The provision of information and assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, employment [and other economic activities] exit and return to the State of return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations;

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[(e) Other measures which are necessary to facilitate the implementation of the present Convention.]

[(e) The recommending of legislation, regulations and other measures which are necessary to facilitate the implementation of the present Convention and to deal with matters relating to international migration and migrant workers.]

[(2) The States Parties to the present Convention shall co-operate in the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families.]

Article 64

[The recruitment [or placement] of workers for employment in another State may be carried out [in conformity with] [subject to] national laws and regulations and in accordance with applicable international agreements [solely] by:

(a) Governmental bodies of the State in which such recruitment takes place;

[(b) Governmental bodies of the State;

(c) A body established by virtue of a bilateral or multilateral agreement;

(d) A prospective employer or a person in his/her service, or private agencies, provided that [any required] approval and supervision for such operations is [solely] granted by the appropriate competent authorities of the State concerned.]

[V.3. (1) Subject to the following paragraph, the right to undertake operations with a view to the recruitment [or placing] of workers in employment in another country shall be restricted to

(a) Public services or bodies of the country in which such operations take place;

(b) Public services or bodies of the receiving country, if authorized by agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement.

(2) National laws and regulations and bilateral or multilateral agreements may also permit the said operations to be undertaken, subject to the approval and supervision of the authorities of the country concerned, by

(a) The prospective employer or a person in his service acting on his behalf;

(b) Private agencies.

Notes

1/ A/C.3/37/1 and A/C.3/37/7 and Corr.1 and 2 (English only).

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(1) The Government of India shall be responsible for the provision of the necessary funds for the operation of the project.

(2) The Government of India shall be responsible for the provision of the necessary technical assistance for the operation of the project.

(3) The Government of India shall be responsible for the provision of the necessary land for the operation of the project.

(4) The Government of India shall be responsible for the provision of the necessary water for the operation of the project.

(5) The Government of India shall be responsible for the provision of the necessary electricity for the operation of the project.

(6) The Government of India shall be responsible for the provision of the necessary transport for the operation of the project.

(7) The Government of India shall be responsible for the provision of the necessary housing for the operation of the project.

(8) The Government of India shall be responsible for the provision of the necessary health services for the operation of the project.

(9) The Government of India shall be responsible for the provision of the necessary education for the operation of the project.

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