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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 37/170 of 17 December 1982, the General Assembly inter alia took note of the last report 1/ of the Working Group and expressed its satisfaction with the substantial progress that the Working Group had so far made in the accomplishment of its mandate, during its inter-sessional meetings in May 1982 and its meetings during the thirty-seventh session of the General Assembly; 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 might 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.

3. 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 and the spring session of the Working Group to Governments, to the competent organs of the United Nations system and to international organizations concerned.

4. Before its meetings during the thirty-eighth session of the General Assembly of 1983, the Working Group held the following sessions at United Nations Headquarters: (a) the first session during the thirty-fifth session of the General Assembly, from 8 October to 19 November 1980; (b) a first inter-sessional meeting from 11 to 22 May 1981; (c) a second session during the thirty-sixth session of the General Assembly from 12 October to 20 November 1981; (d) a second inter-sessional meeting from 10 to 21 May 1982; (e) a third session during the thirty-seventh session of the General Assembly from 18 October to 16 November 1982; (f) a third inter-sessional meeting from 31 May to 10 June 1983.

5. In pursuance of General Assembly resolution 37/170, the Working Group met at the beginning of the thirty-eighth session of the General Assembly at United Nations Headquarters from 27 September to 6 October 1983 under the chairmanship of Mr. Antonio González de León. It held 11 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 Economic Commission for Africa also attended the meetings.

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

(a) Report of the Open-ended Working Group on its inter-sessional meeting from 31 May to 10 June 1983 (A/C.3/38/1);

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

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

(d) Suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden: revised proposals for articles 2 and 4 and part IV of the draft International Convention (A/C.3/38/WG.1/CRP.5);

(e) Suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden relating to proposals presented in document A/C.3/35/WG.1/CRP.15 and Corr.1 and 2 (A/C.3/38/WG.1/CRP.6);

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(f) Further suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden relating to proposals presented in part VI of the draft International Convention (A/C.3/WG.1/CRP.8).

7. 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 meeting from 10 to 21 May 1982 (A/C.3/37/1);

(g) 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)].

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

8. The present report contains exclusively results of discussion in the Working Group during its meetings at the thirty-eighth session of the General Assembly from 27 September to 6 October 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 provisional agreement on the proposed language, which therefore remains only a proposal.

9. 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 meeting 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

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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), part II on fundamental human rights of migrant workers and members of their families, part III on additional rights of migrant workers and members of their families in a regular situation/lawful status (arts. 35 to 54 and art. 56) and part V (arts. 63 and 64) appeared in document A/C.3/38/WG.1/CRP.2/Rev.1.

10. At its meeting during the thirty-eighth session of the General Assembly, the Working Group decided to conclude consideration of part V of the Convention and to that effect to continue the discussion of the pending articles at first reading (arts. 62 and 65 to 68) of part V of the draft Convention as well as the title for part V, on the basis of proposals included in document A/C.3/36/WG.1/CRP.1/Add.3 and in the Working Group's report on its spring session of 1983 (A/C.3/38/1). The Working Group also undertook the first reading of part VII on the basis of document A/C.3/38/WG.1/CRP.6. It also resumed its consideration of pending articles relating to the definitions on the basis of documents A/C.3/36/WG.1/WP.1 and A/C.3/38/WG.1/CRP.5.

Article 62

11. At its 4th meeting on 28 September, the Working Group considered a text for article 62 on the basis of proposed article V.1 in document A/C.3/36/WG.1/CRP.1/Add.3 which 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 to the long-term social and economic consequences for migrants as well as for the communities concerned."

12. For the consideration of this article, it may be recalled that the Working Group, at its spring session of 1983, agreed to suspend discussion of article 62 2/ until the completion of the other articles of part V. At that session the Working Group also had before it an alternative text for article 62, submitted to the Group by the representative of the United States which read as follows:

"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

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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."

13. During the debate on this article, the Chairman drew the attention of the Working Group to the provisional text of article 36 of the draft Convention.

14. With reference to the proposal of the United States, the representative of India pointed out that the article should contain a provision specifying that the "States of employment shall consult and co-operate with the State of transit or return". He further stressed that, for the consideration of this article, cognizance should be taken of the short-term and long-term effects on both manpower needs and social and economic consequences and therefore the terms "short-term" and "long-term" should be deleted. He also suggested that the word "humane" be added before the word "conditions". The representative of Italy proposed retaining the words "and political" and adding the word "community" after the words "or States concerned". In view of the new proposals relating to the second sentence of the article, the representative of the United States proposed to keep that sentence in a separate paragraph which would be put in brackets because in his opinion the provisions of that sentence, as revised, should be placed elsewhere in the draft Convention, namely in article 63.

15. The representative of Italy, supported by other delegations, objected to putting that sentence in brackets. He emphasized that it was not the practice of the Working Group to put an article or a paragraph in brackets because some delegations felt it should be placed somewhere else. He stressed that the Working Group should reconsider that sentence during its second reading with a view to placing it in an appropriate article. The delegation of Algeria and several other delegations expressed their opposition to the inclusion of the word "political" in the proposal by the United States.

16. At the same meeting, the Working Group provisionally agreed on a text for article 62 which read as follows:

"Article 62

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 or choice of] employment [or other economic activity] 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 sound, equitable and humane conditions in connection with lawful international migration of workers and their families.

[In this respect due regard should be paid not only to manpower needs and resources, but also the social, economic, cultural [and political] and other consequences for migrant workers involved in such migration, as well as for the community or States concerned.]" 3/

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Article 65

17. At its 1st, 5th and 6th meetings on 26 and 29 September, the Working Group considered a text for article 65. It may be recalled that, at its spring session of 1983, the Working Group, in view of the number of alternative proposals and lack of time, decided to defer consideration of article 65 until the present session. 4/ In this connection, after informal consultations with delegations, the Chairman and delegations submitted a revised text for further consideration by the Working Group. The revised text, upon which the Working Group based its discussion for article 65, reads 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 to 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."

18. During the discussion, the representative of the United States voiced his concern over the term "their re-establishment". He proposed its deletion. He further stated that the wording of the text could be improved and to that effect the order of the two paragraphs in the proposed text could be reversed. The representative of India stressed that the word "orderly" should be better clarified in the text. The Chairman explained that the term "orderly" has been used in the Working Group and in previously considered texts as implying departure in accordance with the law and in a manner not affecting the fundamental rights of migrant workers. The representative of Algeria, supported by the representative of Morocco, stressed that provisions of article 65 should emphasize the economic, social and cultural reintegration of migrant workers and that maximum guarantee should be provided during the returning process. He also stressed that, with a view to ensuring their durable reintegration in the country of origin, the return of the migrant worker should be final and freely decided upon by the migrant worker. He added that the words "State of return" should be replaced by the words "State of origin". In this connection, the Chairman stated that the aspects of co-operation in the re-establishment of migrant workers in the State of return would be dealt with in a separate paragraph. The representative of Italy proposed deleting the word "economic".

19. At the 5th meeting, after informal consultations with the most interested delegations, the Chairman submitted a revised text for paragraph (1) and (2) of article 65, which read as follows:

"Article 65

(1) States Parties concerned shall co-operate in the adoption of measures regarding the orderly return of migrant workers and their families to

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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.

(2) 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."

20. At its 6th meeting, the representative of Algeria submitted to the Working Group a text for paragraph (3) of article 65, which read as follows:

"(3) States Parties to the present Convention shall also co-operate with a view to ensuring the durable economic, social and cultural reintegration of migrant workers and members of their families in the State of origin."

21. During the discussion of this proposal, the representative of Yugoslavia expressed her full support for the text proposed by Algeria as in her view it reflected appropriately the adequate co-operation called for in that context. Furthermore, she recalled that her delegation had submitted its own proposal along the same lines at the Working Group's inter-sessional meeting held in May-June 1983, as reflected in paragraph 103 of document A/C.3/38/1. The representative of the United States suggested that the new proposal should refer to terms jointly agreed upon between the State of employment and the State of origin.

22. At the 6th meeting, after some discussion on the proposed text submitted by Algeria for paragraph 3, the Working Group provisionally agreed at first reading on a text for article 65, reading as follows:

"Article 65

(1) States Parties concerned 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.

(2) 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 conditions in the State of return.

(3) States Parties concerned may also co-operate with a view to ensuring the durable economic, social and cultural reintegration of migrant workers and members of their families in the State of origin on terms agreed upon by the States concerned."

Article 66

23. At its 1st, 2nd and 3rd meetings, the Working Group continued consideration of a text for article 66. In this connection it may be recalled that, at its spring session of 1983, for lack of time the Working Group decided to postpone consideration of that article until the present session. The text for article 66, which was based on article V.5, read as follows:

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"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."

24. During its consideration, the representative of India, referring to the chapeau of the proposed article, suggested replacing the term "suppressing" by the term "eradicating" or "eliminating". The representative of France explained that, as the purpose of the article was to suppress illegal or clandestine labour, he would prefer to maintain the word "suppressing" in the chapeau. The representative of Morocco suggested using the words "clandestine labour" instead of "illegal employment". The representative of India suggested that the word "illegal" as a prefix to employment was not relevant, as employment in itself was not illegal. In that connection the representative of Mexico, referring to the obstacles encountered by some States to ratify some ILO conventions, stated that the chapeau of the article should mainly address the "prevention of clandestine labour". The representative of Italy, supported by the representative of Sweden, stated that, since the goal of the article was to suppress clandestine movements of workers and their illicit employment, he would not object to substituting the words in question by the terms "eradicating" or "eliminating" as long as the idea of preventing clandestine movement of workers was conveyed in the article. The representative of the United States said that in his view the term "illegal" was ambiguous as it could address an eventual illegal activity of the migrant worker or the status of the migrant worker which might be illegal in itself as regards migration. Further, he explained his concern over the words "misleading information" in subparagraph (a). He proposed to refer to "measures to provide complete and accurate information and to prevent the dissemination of fraudulent information". With reference to the French text of subparagraph (a), the representative of France expressed his preference for a more specific term such as "informations trompeuses ou information en vue d'induire en erreur". Turning to subparagraph (c), the representative of India proposed the deletion of that subparagraph. He explained that, unlike some other delegations, he felt that that provision could not constitute the core of the article, all the more so because violations of human rights of the migrant workers occurred most of the time at the detection stage and that might be construed as vesting arbitrary authority in the employer.

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25. The representative of Argentina, supported by the representative of Sweden, opposed the proposed deletion of subparagraph (c). They felt that its substance was very important in relation to the issues discussed under article 66. The representative of the United States suggested that the issues of measures to be taken or to detect migrant workers in an irregular situation should be dealt with either in a separate paragraph or a separate article. In that connection, he proposed to reformulate subparagraph (c) to read "Measures to detect and deal effectively with illegal employment of migrant workers in an irregular situation including possible imposition of sanctions upon persons or undertakings illegally employing migrant workers in an irregular situation". The representative of Greece proposed replacing the words "irregular situation" in that proposal by the words "undocumented workers". The representative of Italy proposed a formulation reading: "States of employment shall take all measures that might be effective in their territory against the illegal employment of migrant workers in an irregular situation including sanctions against persons or entities employing such workers".

26. In reply to some questions raised during the debate in relation to the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers of 1975 (No. 143), the representative of ILO pointed out that the ILO Convention, while seeking to protect migrant workers, at the same time in part I, article 3, invited each member to adopt all necessary and appropriate measures to suppress clandestine movements of migrant workers for employment and illegal employment of migrants and against the organizers of illicit or clandestine movements of migrants for employment.

27. At its 3rd meeting on 28 September, after some informal consultations with interested delegations, the Chairman and the delegations concerned submitted a new second paragraph reading:

"States of employment shall take all adequate measures that might be effective in eliminating the employment in their territory of migrant workers in an irregular situation including sanctions on persons or entities employing such workers wherever appropriate."

During the consideration of this new proposal, the representative of Italy suggested adding a sentence stating that "Such measures shall not relieve an employer from his responsibilities with regard to the rights of migrant workers arising from their employment". The representative of India proposed to reformulate that proposal to read "the rights of migrant workers vis à vis their employer arising from employment".

28. At the same meeting, the Working Group provisionally agreed at first reading on the following text for article 66:

"Article 66

(1) The States Parties to the present Convention, including countries of transit, shall collaborate with a view to preventing and eliminating [illegal or] clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

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- (a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;
- (b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons or entities who organize, operate or assist in organizing or operating such movements;
- (c) Measures to impose effective sanctions on persons, groups or entities who use violence, threats or intimidation against migrant workers or members of their family in an irregular situation.

(2) States of employment shall take all adequate measures that might be effective in eliminating employment in their territory of migrant workers in an irregular situation, including sanctions on persons or entities employing such workers wherever appropriate. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures."

Article 67

29. At its 3rd and 4th meetings on 28 September, the Working Group considered a text for article 67 on the basis of article V.6 which read as follows:

"V.6 The States Parties to the present Convention undertake that, when there are migrant workers and members of their families in an irregular situation on their territory, they will not permit that situation to persist. In considering the possibility of regularizing the situation of such persons, account shall be taken of any applicable bilateral or multilateral agreements, of the circumstances of their entry and stay in the country and other relevant social and family considerations. If it is decided not to permit a migrant worker or members of his family to stay, their return to the State of origin or of normal residence under reasonable conditions and their protection in the period pending their departure shall be ensured."

30. During the consideration of this article, the representative of Mexico proposed to replace the phrase "they will not permit that situation to persist" by the sentence "shall do whatever possible to ensure that that situation will not persist". Referring to the French version of the text, the representative of Morocco expressed her wish to maintain the wording of the text as it appeared in the proposed text. She felt that States should be firmly invited not to authorize a situation conducive to the exploitation and violation of human rights of migrant workers. She then suggested replacing in the French text the words "à ne pas autoriser" by the words "à ne pas permettre". The representative of Italy proposed inserting the word "orderly" before the words "return to the State of origin". The representative of the United States found the terms "social and family" unclear and proposed deleting them. In that regard he expressed the view that if the "considerations" were specified in the text, it would be preferable to use the term "should" instead of "shall". Further, the representative of the United States proposed adding the words "duration of" after the words "entry and", and the words

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"in the State of employment" after the words "his family to stay". He also suggested inserting the words "as stipulated in part II of the present Convention" after the word "departure". The representative of India suggested adding the words "and transit" after the word "departure". He stressed that the wording of the last phrase should be "their protection during/pending their departure and during their transit shall be ensured". The representative of the Netherlands proposed replacing the words "their return to the State of return or of normal residence under reasonable conditions" by the words "their leave for the State of return or any other State where their admission is guaranteed". The representative of Italy proposed replacing the words "and other relevant social and family considerations" by the words "and other relevant considerations, in particular those relating to family and social situations of the migrant worker". Referring to that proposal, the representative of the United States suggested putting the words "and social" in brackets. Referring to the French text, the representative of Algeria stated that the words "à un travailleur, ou membres de sa famille" should be replaced by the words "à ce travailleur ou les membres de sa famille".

31. At the 4th meeting, after some discussion on the article, the Working Group provisionally agreed at first reading on a text for article 67, reading as follows:

Article 67

States Parties to the present Convention undertake that, when there are migrant workers and members of their families in an irregular situation on their territory, they [will not permit that situation to persist] [shall endeavour to ensure that such a situation does not persist]. In considering the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the State of employment and other relevant considerations, in particular those relating to the family [and social] situation of the workers. If it is decided not to permit a migrant worker or a member of his family to stay in the State of employment, their orderly return to their State of return, or any other State in which their admission is guaranteed, shall be ensured as well as their protection during the period pending their departure and during their journey, as stipulated in part II of the present Convention."

Article 68

32. At its 5th and 6th meetings on 29 September, the Working Group had before it certain proposals 5/ submitted by the delegation of India which the Working Group, at its spring session of 1983, had agreed to defer to a later stage with a view to ascertaining where they would be more appropriately covered in the draft Convention. The proposals read 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

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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."

33. The representative of India stressed that his proposals could be incorporated in part V, in particular in proposed article V.3 of document A/C.3/36/WG.1/CRP.1/Add.3, or article 63 as supplementary elements which would complement the provisions of part V.

34. The representative of the United States stated that some of the issues contained in the proposals by India were already covered in other parts of the Convention and some of them were already regulated by bilateral or multilateral agreements such as those prepared in the framework of UNESCO. The representative of Sweden pointed out that some of the elements contained in the proposals by India could be found in other international instruments such as the European Convention on the Legal Status of Migrant Workers. He added that, although they might be considered for inclusion in the draft Convention, he did not think that part V would be the appropriate place for them. In that connection, the representative of Italy suggested co-ordinating their contents with part III of the draft Convention. The representative of the USSR expressed his support for the inclusion of the proposals by India in part V of the Convention. In his view, those proposals contained new elements and they merited some attention by the Working Group and could not be excluded from part V. The representative of India explained the usefulness of having a consolidated text dealing with migrant workers, which was also in keeping with the practice followed in the Working Group when principles of relevance and applicability to migrant workers had been taken from other international instruments.

35. After the discussion and informal consultations with delegations, the Chairman proposed to consolidate the Indian proposals in one single article which would be article 68 of part V of the draft Convention, reading as follows:

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" (i) The States Parties shall provide measures to establish and ensure that working and living conditions of migrant workers are in keeping with the standards of fitness, safety, health and principles of human dignity. Such measures shall include inspection of the working and living premises of migrant workers by such competent authorities as designated by each State Party concerned. The said authorities shall also make recommendations for the improvement in the quality of conditions so inspected.

(ii) The States Parties shall ensure that, wherever necessary, assistance is provided for the transportation of the bodies of deceased workers and that death compensation matters are promptly settled."

36. During the consideration of this new version for article 68, the representative of France proposed adding the words "if not yet provided for in their legislation" after the word "States Parties shall" in paragraph (i). The representative of the Federal Republic of Germany proposed an alternative to the French proposal, which would be put in brackets reading: "[in the same manner as they do for their national workers]". The representative of Greece suggested adding the words "and members of their families" after the words "living premises of migrant workers" and, in the second paragraph, to replace the term "the bodies of deceased workers" by the term "the bodies of deceased workers or members of their families". The representative of Argentina proposed replacing the word "transportation" by the word "repatriation to the State of origin". The representative of the Netherlands placed his reservation on the proposed article 68, in particular to the word "assistance", and stated that in some countries the repatriation of the body of a deceased worker was not arranged by the government authorities. Therefore he suggested that part 2 of the proposed article 68 should be restricted to an obligation for the States concerned to remove legal obstacles to the repatriation of a body.

37. The representative of the United States said that the term "assistance" was ambiguous and proposed putting the entire article 68 in brackets. He stated that the provision of that article related to consular matters and therefore should be dealt with under consular arrangements.

38. In the course of the consideration of this article, the representative of Greece submitted a proposal for consideration at the second reading, so that it could be inserted as paragraph 3 of article 68 or in some other part of the Convention.

"The State of origin and the State of employment shall ensure and guarantee the human rights and dignity of all migrant workers and members of their families by concluding bilateral agreements or conventions and establishing procedures and mechanisms to guarantee justice and equality of treatment to migrant workers and their families."

39. At the same meeting, the Working Group provisionally agreed at first reading to place the entire text, as revised, in brackets, pending further consideration regarding the placement of this article in the relevant part of the Convention. The text of article 68 reads as follows:

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"Article 68

[(1) The States Parties shall, if not yet provided for in their legislation, [in the same manner as they do for national workers] provide measures to establish and ensure that working and living conditions of migrant workers and members of their families are in keeping with the standards of fitness, safety, health and principles of human dignity. Such measures shall include inspection of the working and living premises of migrant workers and members of their families by such competent authorities as designated by each State Party concerned. The said authorities shall also make recommendations for the improvement in the quality of these conditions.

(2) The States Parties shall ensure that, wherever necessary, assistance is provided for the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families and that death compensation matters are promptly settled.]"

Title for part V

40. At its 4th, 5th and 6th meetings on 28 and 29 September, the Working Group considered a title for part V of the draft Convention. In this connection, it may be recalled that, at its spring session of 1983, the Working Group decided to postpone consideration of the title of part V until completion of the articles pertaining to that part. 6/

41. For the consideration of the title, the Working Group had before it the initial title reproduced in the report of the Working Group (A/C.3/38/1) reading as follows:

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

42. Further, the Working Group also had before it two alternative proposals submitted at the spring session by the delegations of the United States and India respectively.

43. The text submitted by the United States read as follows:

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

44. The text submitted by India read as follows:

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

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45. The representative of India explained that the word "provisions" was necessary in order to create an exclusive sphere of obligation for the States Parties.

46. After a brief exchange of views on the proposals on the basis of the formulation of the text of the provisionally agreed article 62, the Working Group at first reading provisionally agreed on a title for part V of the draft Convention reading as follows:

"Part V: Promotion of sound, equitable and humane conditions in connection with lawful international migration of workers and their families"

47. At its 6th meeting, the Working Group thus concluded consideration of part V of the draft Convention.

Part VII: General provisions

48. At its 7th meeting on 30 September, the Working Group began consideration of part VII of the draft Convention on the basis of suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden (A/C.3/38/WG.1/CRP.6). The representative of Italy, in presenting the suggestions on behalf of the sponsors, stressed the need for the inclusion in the Convention of a part dealing with certain basic problems such as the relationship between the Convention and domestic law on the one hand, and other international treaties on the other. He explained that the spirit of the proposal was to enhance the most favourable conditions. He further stressed the need for States Parties to adopt necessary measures to execute the provisions of the Convention.

49. In the course of the general debate on the new suggestions, a number of representatives voiced difficulties in discussing a text which had just been tabled and on which they had been unable to consult their respective Governments. The representatives of the Federal Republic of Germany and the United States in particular reserved their position, noting that consideration of any such text should not be treated as a first reading. In that regard, the Chairman explained that the whole text adopted at the first reading was only provisional and subject to further revision. The Working Group decided to proceed to the consideration of part VII on the understanding that those concerns would be reflected in the report.

Article (VII.1) 7/

50. At its 7th meeting, the Working Group considered a text for the first article of part VII on the basis of proposed article VII.1 which read as follows:

"1. Nothing in this Convention shall have the effect of diminishing or limiting any rights or freedoms that may be afforded to migrant workers and members of their families by virtue of:

(a) The law or practice of a State Party; or

(b) Any international convention, treaty or agreement in force for the State Party concerned.

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2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Convention."

51. A number of drafting changes were suggested to the chapeau of the proposed article. In particular, the representative of the Federal Republic of Germany proposed to replace "Nothing" by "No provision" at the beginning of the chapeau and in paragraph 2. The representative of the United States suggested that, in the same sentence, the words "have the effect of diminishing or limiting" be replaced by "affect". The representative of Morocco proposed that the words "may be" before "afforded" be replaced by "are" and stressed that the text should be made less negative. The chapeau was then provisionally agreed upon with the suggested drafting changes.

52. Members of the Working Group also debated, with respect to subparagraph (a), whether the proposed wording was sufficiently broad. In the view of some delegations, the words "law or practice" should be further specified. The representative of the United States proposed that the phrase should read "law and practice thereunder" or "law and practice in accordance therewith" and the representative of France suggested the wording "law or practice or jurisprudence". The representative of Italy pointed out that the original suggestion covered all situations, including common-law countries, but suggested the wording "legislation, practice and jurisprudence" in order to meet the difficulties expressed. Other delegations held the view that, since the problems arose from differences in the various legal systems, they could be solved by appropriate translation of the originally suggested terms in the various languages. It was subsequently agreed to retain the original formulation with the word "legislation" in square brackets.

53. With respect to subparagraph (b), the representative of Argentina proposed that only the word "treaty" should be retained as covering any international agreement, in accordance with the Vienna Convention on the Law of Treaties. The Working Group also debated whether the subparagraph should be amended to reflect the concern expressed by the delegation of India with regard to the adoption of other treaties in future, and some suggestions were made in that respect. Most members, however, took the view that the language proposed for the subparagraph did not preclude the adoption of other treaties in future and that it was preferable not to include the notion of the future in an international agreement. The subparagraph was therefore provisionally adopted as suggested and as amended by Argentina.

54. Concerning paragraph 2 of article VII.1, a number of delegations expressed doubts with respect to the appropriateness of the inclusion of that paragraph in the draft Convention or of some of its wording. The representative of the United States, expressing the view that the paragraph was ambiguous and could be read as abridging certain rights, such as freedom of speech, proposed the deletion of the paragraph. Alternatively, she proposed the insertion of the word "illegal" prior to "activity" and "act" but did not insist on that change as long as the entire provision was either put in brackets or deleted. The representative of Morocco

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proposed changing the word "right" to "possibility" in order to strengthen the paragraph. That proposal was supported by Tunisia who also proposed replacing "destruction" by "impeding the enjoyment or exercise" and deleting the last phrase beginning with "... or at their limitation ...". The representative of France proposed that the suggested article be amended by replacing the word "implying" by "authorizing" and by amending the last phrase to read "or introduce limitations based on this Convention". The Working Group then agreed to retain provisionally, in square brackets, a text based on the original suggestions as well as the amendments proposed by Tunisia and France, as further amended in the course of the debate.

55. The text of the article as provisionally agreed on read as follows:

"Article (VII.1)

"1. No provision in this Convention shall affect any rights or freedoms afforded to migrant workers and members of their families by virtue of:

(a) The law [, legislation] or practice of a State Party; or

(b) Any international treaty in force for the State Party concerned.

2. [No provision in the present Convention may be interpreted as authorizing any State, group or person to engage in any activity or perform any act that would impair any of the rights or freedoms recognized herein [or introduce limitations based on the present Convention]."

[2. Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.]"

Article (VII.2)

56. At its 8th meeting, the Working Group considered a text for the second article of part VII of the draft Convention on the basis of proposed article VII.2 reading as follows:

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

57. A number of delegations pointed out that the text was ambiguous in certain respects and proposed a number of changes. It was stated, in particular, that the second sentence was unclear and should be made more specific. The representative of Morocco, supported by the representative of the USSR, proposed, in that respect, to amend the sentence to read "Any form of pressure ... shall be subject to penalties". The representative of Italy proposed the wording: "No form of

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pressure ... shall be permitted". In his view, the actual measures to be taken would be up to each individual State Party. The representative of the United States, supported by the representative of France, held, however, that the amendments proposed did not solve the inherent ambiguity of the second sentence and proposed its deletion. It was subsequently decided to retain provisionally the two alternative formulations proposed for that sentence, together with the original suggestion, in square brackets.

58. With regard to the third sentence, a number of doubts were voiced concerning the meaning of the term "agreement". The representative of Italy, on behalf of the sponsors, indicated that the term was intended to cover all types of agreement, international or domestic. The representative of France suggested that that word be replaced by "action". The representative of the United States proposed the wording "personal service contract", amending it subsequently to read "agreement or contract the effect of which is ...". The representative of India, stating that it was insufficient to refer only to the effect of such agreement or contract, proposed the inclusion also of the word "implying". On the suggestion of the representative of Argentina, the words "Any provision in" were also inserted at the beginning of the sentence in order to clarify that only the offending provisions, and not the entire agreement, would be nullified. It was then agreed to retain provisionally the third sentence, as amended, with the proposals of India and the United States in square brackets.

59. The text of the article provisionally agreed upon read as follows:

"Article (VII.2)

"The rights provided for in this Convention shall not be capable of renunciation. [It shall be unlawful to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights.] [Any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights shall be subject to penalties.] [No form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the same rights shall be permitted.] Any provision in any agreement or contract [the effect of which is] [implying] the relinquishment or foregoing of any of the said rights shall be void."

Article (VII.3)

60. At its 8th meeting, the Working Group considered a text for the third article of part VII of the draft Convention on the basis of the proposed article VII.3 contained in document A/C.3/38/WG.1/CRP.6 which read as follows:

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

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61. In the course of the debate, concern was expressed by a number of delegations regarding the mechanism by which remedy could be obtained. The representative of Italy, on behalf of the sponsors, expressed the view that the term "remedy" should be left broad so as to allow each legal system to use the remedies provided for within that system, on the sole condition that they be effective. The representative of Morocco suggested that the words "by way of recourse" should be inserted after "effective remedy". The representative of India proposed the following wording: "... shall have recourse to the remedies effectively available". As there was general agreement that the article, based on subparagraph (a) of article 2(3) of the International Covenant on Civil and Political Rights, was not complete, the Working Group agreed to retain provisionally a text corresponding to that of the Covenant. The words "in accordance with its constitutional processes and with the provisions of this Convention" were inserted in square brackets at the request of the representative of the United States.

62. The text of the article provisionally agreed upon read as follows:

"Article (VII.3)

Each State Party to the present Convention undertakes [in accordance with its constitutional processes and with the provisions of this Convention]:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted."

Article (VII.4)

63. At its 8th meeting, the Working Group considered a text for the fourth article of part VII of the draft Convention based on the proposed article VII.4 in document A/C.3/38/WG.1/CRP.6, which read as follows:

"States Parties undertake to adopt all necessary measures aimed at implementing the provisions of the present Convention."

64. After a brief discussion, in which the representative of the United States proposed to add "in accordance with its constitutional processes and the provisions of this Convention", the Working Group decided to retain provisionally the following text for article (VII.4):

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"Article (VII.4)

Each State Party undertakes [in accordance with its constitutional processes and the provisions of this Convention] to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention."

65. The United States delegation stated that it understood that its suggestion had been adopted by the Working Group and on that basis alone had agreed to proceed.

66. At the 7th meeting, the representative of India proposed the following additional articles for inclusion in part VII: 6/

"Part VII.5

This Convention does not prevent members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application.

Part VII.6

This Convention recommends, in addition to other recommendations implicit in the Convention, supplementary agreements on the methods of (i) application of social security systems, (ii) avoidance of double taxation, (iii) evolution of model-contract procedures, (iv) transfer of migrant workers' savings and (v) validity of documents."

67. As a number of other members expressed the view that the intent behind the proposal made by India was already covered by the original suggestions for part VII, in particular article VII.1, debate on the suggestions by India was postponed until after consideration of part VII and consultations between the Chairman and interested delegations.

68. On the other hand, at its spring session of 1983, the Working Group had had before it a proposal by the representative of Sri Lanka for consideration. However, for lack of time, the Working Group had decided to postpone it until the present session. The proposal 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."

69. At its 10th meeting and upon the suggestion of the Chairman, the representatives of Sri Lanka and India, after informal consultations, submitted a consolidated text of their proposals reading:

"States Parties to the present Convention shall remain free to conclude bilateral or multilateral agreements, subject to no limitations other than those provided for in this Convention [with a view to:]

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(a) Resolving such problems as may arise from its implementation, in particular situations in matters such as social security, model employment contract and the validity of certificates and documents;

(b) Ensuring the fair and just treatment of all migrant workers and members of their families."

70. During the discussion on this proposal, the representative of the United States expressed his difficulty with the provisions of the proposal which he found inappropriate for inclusion in the draft Convention. In objection to the observations made by the delegation of the United States, the representative of India pointed out that the provisions of the new proposal for article (VII.5) were not new and that they had already been embodied in other international instruments. He further added that the Group should take note of such concepts as model employment contracts and the validity of certificates and documents, which could perhaps be adequately covered as substantive provisions in earlier parts of the Convention at the time of the second reading.

71. Equally at its 10th meeting, after some discussion, the Working Group provisionally agreed to retain the consolidated text for article VII.5 as follows:

"Article (VII.5)

States Parties to the present Convention shall remain free to conclude bilateral or multilateral agreements, subject to no limitations other than those provided for in this Convention [with a view to:]

[(a) Resolving such problems as may arise from its implementation, in particular situations in matters such as social security, model employment contract and the validity of certificates and documents;]

[(b) Ensuring the fair and just treatment of all migrant workers and members of their families.]"

Article 2

72. At its 9th and 10th meetings on 3 October, the Working Group also resumed consideration of the pending parts of the definitions to be inserted in part I of the draft Convention. To that end, the Group centred its debate on the new proposals for articles 2 and 4 submitted by the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden contained in document A/C.3/38/WG.1/CRP.5 which read as follows:

"Article 2

1. The term "migrant worker" refers to any person who, in a State of which he is not a national, is to engage, is engaged or has been engaged in an economic activity for an employer or on his own account.

2. For the purpose of this Convention:

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- (a) Frontier workers shall be considered migrant workers when they engage in work in one State but retain their permanent residence in a neighbouring State to which they normally return every day;
- (b) Seasonal workers shall be considered migrant workers when they are employed or engaged in work which, by its character, is dependent on seasonal conditions and can therefore be performed only during part of the year;
- (c) Seafarers, including fishermen, shall be considered migrant workers when they are engaged in any function whatsoever on board a vessel other than a warship registered in a State of which they are not nationals;
- (d) Workers on a permanent offshore installation shall be considered migrant workers when the installation on which they are engaged falls under the jurisdiction of a State of which they are not nationals;
- (e) Itinerant workers shall be considered migrant workers when, having their permanent residence in one State, they have to go for purposes of their occupation to another State for a short period.

3. The term "migrant worker" excludes:

- (a) Persons employed by international organizations and agencies and persons employed by a State outside its territory whose admission and status are regulated by general international law or by specific international agreements or conventions;
- (b) Persons employed on behalf of a State outside its territory for the execution of programmes of co-operation for development agreed with the receiving State and whose admission and status are regulated by specific international agreements or conventions."

"Article 4

For the purpose of this Convention, migrant workers and members of their families, as defined in the preceding articles:

- (a) Are considered as documented or in a regular situation if they possess the requisite authorizations in respect of admission, stay and economic activity;
- (b) Are considered as undocumented or in an irregular situation if they do not possess the authorizations of the State in whose territory they are that are required by law in respect of admission, stay or economic activity, or if they cease to fulfil the conditions to which their admission, stay or economic activity are subject."

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73. Document A/C.3/38/WG.1/CRP.5 also contains the new proposals of the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden for part IV.

74. Previously, the Working Group had had before it proposals relevant to articles 2 and 4 from the same delegations, which had appeared originally in document A/C.3/36/WG.1/CRP.1, as well as relevant proposals from the delegations of Algeria, Barbados, Egypt, Mexico, Pakistan, Turkey and Yugoslavia, which had appeared originally in document A/36/378, annex I. Both sets of proposals, as well as various suggestions made during consideration of the latter with respect to the definition of "migrant workers", were included in document A/C.3/36/WG.1/WP.1. The Working Group bore in mind all those proposals as the general debate developed and more specifically concerning article 2. After a lengthy general exchange of views, the Group focused on article 2.

75. The representative of Sweden, introducing the revised proposals for articles 2 and 4 explained that the co-sponsoring delegations had studied the comments made with regard to their own earlier proposals, now being withdrawn, and other relevant suggestions, and had tried to draft texts that would accommodate the views and concerns expressed. In doing so they had concentrated the texts, without losing sight of the broad mandate given to the Working Group and the wish to cover specific categories of migrant workers excluded, for various reasons, from previous international instruments. The proposed definitions should be read in conjunction with the substantive provisions of the Convention, since definitions *per se* did not confer any rights. As for part IV, proposals for which were also included in document A/C.3/38/WG.1/CRP.5, the representative of Sweden explained that only the order of the proposed articles had been changed to bring them into line with the proposed article 2.

76. During the debate on the revised proposal, several delegations expressed their objection to the notion of extending the protection of the Convention to persons who were self-employed. They emphasized that the Convention should cover only employed migrant workers and not those working on their own account who might turn out to be employers themselves. In that sense, they pointed out that the purpose of the Convention was not to protect the rights of employers. In that connection the representative of Morocco and other delegations stressed that the purpose of the draft Convention should not be to protect privileged workers, and that inclusion of self-employed workers in the draft Convention would be in contradiction with the mandate of the Working Group as set out in General Assembly resolution 34/172. With respect to article 2, the representative of Morocco referred to General Assembly resolution 33/162 by which the Assembly had endorsed the Charter of Rights for Migrant Workers in Southern Africa of 7 April 1978.

77. The representatives of Spain, India and Italy, while recognizing that the Convention should exclude highly privileged categories of self-employed workers, suggested that rights of unprivileged self-employed workers such as small entrepreneurs should be protected.

78. The representative of the Netherlands stated that, since the purpose of the Convention was to reaffirm and safeguard the human rights of migrant workers, a

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reference in the Convention to self-employed workers would diminish the acceptance of the terms of the Convention. The representative of the United States stressed the importance of the notion of "temporary" so that the definition did not cover all resident aliens and stressed also that the definition be limited to those who were "lawfully admitted" or "documented migrant workers".

79. The representatives of the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics observed that, although the revision of proposed article 2 constituted a step forward, the article still required considerable reformulation both in respect of the definition of the term "migrant worker" and in respect of possible exceptions to it (article 2, paragraphs 1, 2 and 3). They drew attention, in particular, to the need to take into account in the work the relevant provisions of existing international instruments on the question of the situation of migrant workers.

80. Upon the suggestion of the representative of Greece and other delegations, the Working Group suggested putting the words "or on his own account" in brackets in order to facilitate the work of the Group at the stage of first reading.

81. In reply to certain questions raised by some delegations during the debate, the observer of ILO drew the attention of the Working Group to the definition of the term "migrant workers" in the Equality of Treatment (Social Security) Convention, 1962, and the Maintenance of Social Security Rights Convention, 1982. He pointed out that those international labour standards covered migrant workers irrespective of their regular or irregular status, irrespective of whether they were self-employed or employed other than on their own account and irrespective of whether they were admitted for a season, temporarily or permanently. He then referred to the definitions contained in the Migration for Employment Convention (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975.

82. At its 10th meeting, the delegation of India submitted a new proposal for article 2, which read as follows:

"Article 2

(i) The term "migrant worker in a regular situation" refers to a person who has departed, intends to depart or is in the process of departing from the State of origin or normal residence in accordance with the laws of that country and intends to be employed, is employed or is in the process of being employed in the country of which he is not a national in any remunerative work or economic activity by an employer or on his own, irrespective of his having in his possession a work-permit or a work-agreement and irrespective of the mode of his recruitment and nature of work assigned to him.

(ii) For the purpose of this Convention, all frontier workers, seasonal workers, seafarers, workers on offshore installations and itinerant workers shall not be recognized as migrant workers in a regular situation excepting when laws of the receiving countries so determine or when

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concerned States agree to accept the inclusion of such workers in the category of migrant workers through bilateral or multilateral instruments."

83. At the same meeting the Working Group agreed to defer consideration of articles 2 and 4 until its next session on the understanding that the old proposals by Finland, Italy, Norway, Portugal, Spain and Sweden (A/C.3/36/WG.1/CRP.1, also contained in column C of document A/C.3/36/WG.1/WP.1) for articles 2 and 4 had been withdrawn.

84. Further, the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden submitted a working paper containing proposals for part VI of the draft Convention (A/C.3/38/WG.1/CRP.8). Since there was no time to discuss the document, the representative of Sweden, on behalf of the co-sponsoring delegations, proposed that the document be annexed to the report of the Working Group.

85. At its 11th 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 DURING THE THIRTY-EIGHTH
SESSION OF THE GENERAL ASSEMBLY

Part V: Promotion of sound, equitable and humane conditions
in connection with lawful international migration
of workers and their families

Article 62

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 or choice of] employment [or other economic activity] 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 sound, equitable and humane conditions in connection with lawful international migration of workers and their families.

[In this respect due regard should be paid not only to manpower needs and resources, but also the social, economic, cultural [and political] and other consequences for migrant workers involved in such migration, as well as for the community or States concerned.]

Article 65

(1) States Parties concerned 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.

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(2) 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 conditions in the State of return.

(3) States Parties concerned may also co-operate with a view to ensuring the durable economic, social and cultural reintegration of migrant workers and members of their families in the State of origin on terms agreed upon by the States concerned.

Article 66

(1) The States Parties to the present Convention, including countries of transit, shall collaborate with a view to preventing and eliminating [illegal or] clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons or entities who organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities who use violence, threats or intimidation against migrant workers or members of their family in an irregular situation.

(2) States of employment shall take all adequate measures that might be effective in eliminating employment in their territory of migrant workers in an irregular situation, including sanctions on persons or entities employing such workers wherever appropriate. The rights of migrant workers *vis-à-vis* their employer arising from employment shall not be impaired by these measures.

Article 67

States Parties to the present Convention undertake that, when there are migrant workers and members of their families in an irregular situation on their territory, they [will not permit that situation to persist] [shall endeavour to ensure that such a situation does not persist]. In considering the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the State of employment and other relevant considerations, in particular those relating to the family [and social] situation of the workers. If it is decided not to permit a migrant worker or a member of his family to stay in the State of employment, their orderly return to their State of return, or any other State in which their admission is guaranteed, shall be ensured as well as their protection during the period pending their departure and during their journey, as stipulated in part II of the present Convention.

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Article 68

[(1) The States Parties shall, if not yet provided for in their legislation, [in the same manner as they do for national workers] provide measures to establish and ensure that working and living conditions of migrant workers and members of their families are in keeping with the standards of fitness, safety, health and principles of human dignity. Such measures shall include inspection of the working and living premises of migrant workers and members of their families by such competent authorities as designated by each State Party concerned. The said authorities shall also make recommendations for the improvement in the quality of these conditions.]

(2) The States Parties shall ensure that, wherever necessary, assistance is provided for the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families and that death compensation matters are promptly settled.]

Part VII: General provisions

Article (VII.1)

1. No provision in this Convention shall affect any rights or freedoms afforded to migrant workers and members of their families by virtue of:

- (a) The law [, legislation] or practice of a State Party; or
- (b) Any international treaty in force for the State Party concerned.

2. [No provision in the present Convention may be interpreted as authorizing any State, group or person to engage in any activity or perform any act that would impair any of the rights or freedoms recognized herein [or introduce limitations based on the present Convention.]

[2. Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.]

Article (VII.2)

The rights provided for in this Convention shall not be capable of renunciation. [It shall be unlawful to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights.] [Any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights shall be subject to penalties.] [No form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the same rights shall be permitted.] Any provision in any agreement or contract [the effect of which is] [implying] the relinquishment or foregoing of any of the said rights shall be void.

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Article (VII.3)

Each State Party to the present Convention undertakes [in accordance with its constitutional processes and with the provisions of this Convention]:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article (VII.4)

Each State Party undertakes [in accordance with its constitutional processes and the provisions of this Convention] to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

Article (VII.5)

States Parties to the present Convention shall remain free to conclude bilateral or multilateral agreements, subject to no limitations other than those provided for in this Convention [with a view to:]

[(a) Resolving such problems as may arise from its implementaton, in particular situations in matters such as social security, model employment contract and the validity of certificates and documents,]

[(b) Ensuring the fair and just treatment of all migrant workers and members of their families.]

Notes

- 1/ See A/C.3/37/7 and Corr.1 and 2.
- 2/ For further details see the report of the Working Group on its spring session of 1983 (A/C.3/38/1, paras. 70 to 77).
- 3/ In this particular case, the brackets around the second paragraph of the article mean that the Working Group will have to consider at a later stage where this paragraph should be appropriately placed in the Convention; whereas the brackets around the words [and political] indicate that the Working Group has not reached agreement on the proposed language.

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Notes (continued)

4/ For further details, see the Working Group's report on its spring session of 1983 (A/C.3/38/1, paras. 102 to 106).

5/ For further details, see the Working Group's report on its spring session (A/C.3/38/1, paras. 93 to 96).

6/ For further details see the report of the Working Group on its spring session (A/C.3/38/1, paras. 67 to 77).

7/ Articles in part VII to be renumbered after the consideration of part VI.

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Annex

WORKING PAPER SUBMITTED BY FINLAND, GREECE, ITALY, NORWAY, PORTUGAL,
SPAIN AND SWEDEN; FURTHER SUGGESTIONS RELATING TO PROPOSALS
PRESENTED IN DOCUMENT A/C.3/35/WG.1/CRP.15 and Corr.1 AND 2 (PART VI)
OF THE DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

Reflections on a system for supervision of
the application of the Convention

1. The purpose of this paper is to throw light on issues that arise in ensuring the effective implementation of the obligations falling on States Parties under human rights instruments of the United Nations system. It is not concerned with the initial question of the incorporation of international conventions into national law. It should merely be noted in passing that the co-sponsoring countries intend to submit a draft provision according to which the States Parties undertake to adopt all necessary measures aimed at implementing the Convention under consideration here which will go some way towards securing the effective observance of the rights recognized and the other provisions included therein. The working paper focuses on the supervisory machinery that may be needed at the international level to make certain that States Parties effectively apply the Convention once it is adopted and have appropriate mechanisms for resolving questions that may arise under it in relations between them.

2. There are numerous precedents for supervisory machinery in the United Nations as well as in the International Labour Organisation, which is the agency concerned in most of the fields covered by the Convention. Several regional instruments outside the United Nations also have recourse to international supervision. Therefore, a brief recapitulation of the broad features of the main supervisory mechanisms adopted by the United Nations and ILO may be instructive in the elaboration of arrangements suited to the Convention on all migrant workers and members of their families.

3. In the United Nations, supervisory machinery is an integral part of the two Covenants and the Conventions on the Elimination of All Forms of Racial Discrimination and on the Elimination of All Forms of Discrimination Against Women:

(a) The International Covenant on Economic, Social and Cultural Rights, in part IV, calls on States Parties to submit reports in stages on the measures which they have adopted and the progress made in achieving the observance of the rights. The Economic and Social Council established a sessional working group to consider reports from States Parties and specialized agencies, the Covenant having associated the latter with both the examination of reports and the formulation of recommendations. The sessional working group encountered certain difficulties in discharging its responsibilities and the Economic and Social Council recast its composition and arrangements by resolution 1982/33 of 6 May 1982. The main changes include the election by the Economic and Social Council of the members of the sessional working group from among States Parties to the Covenant, the designation by Governments of experts with recognized competence in the field of human rights,

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and the formulation of suggestions and recommendations by this group of experts at each of its sessions based on its study of the reports by States Parties and specialized agencies;

(b) The International Covenant on Civil and Political Rights, in part IV, set up an 18-member Human Rights Committee of nationals of States Parties. Its duty is, first, to consider the reports to be submitted by States Parties on the measures they have adopted which give effect to the rights spelled out in the Covenant and on the progress made in the enjoyment of those rights. Secondly, if a State Party declares that it recognizes the competence of the Committee to consider communications to the effect that another State Party which has made such a declaration claims that the former is not fulfilling its obligations under this Covenant, and where the matter cannot satisfactorily be settled between them, the Committee shall make available its good offices with a view to a friendly solution and may appoint an ad hoc five-member Conciliation Commission for that purpose. Thirdly, the Optional Protocol to the International Covenant on Civil and Political Rights enables the Human Rights Committee to consider communications from individuals subject to the jurisdiction of a State Party who claim to be victims of a violation by that State Party of any right set forth in the Covenant;

(c) The International Convention on the Elimination of All Forms of Racial Discrimination, in part II, established a Committee on the Elimination of Racial Discrimination consisting of 18 experts of high moral standing and acknowledged impartiality, elected by States Parties from among their nationals who serve in their personal capacity. This Committee is in the first instance empowered to consider the reports to be submitted by States Parties on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of this Convention. Secondly, if a State Party considers that another State Party is not giving effect to the provisions, it may bring the matter to the attention of the Committee; if the matter cannot be adjusted to the satisfaction of both parties, the Chairman of the Committee appoints an ad hoc five-member Conciliation Commission of persons who may or may not be members of the Committee, and the Commission's good offices are made available with a view to an amicable solution. Thirdly, a State Party may declare that it recognizes the competence of the Committee to consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any right set forth in this Convention; but a communication is not receivable if it concerns a State Party which has not made such a declaration. It is worth noting in passing that this Convention does not apply to distinctions made between citizens and non-citizens;

(d) The Convention on the Elimination of All Forms of Discrimination Against Women, in part V, set up a Committee on the Elimination of Discrimination against Women consisting of 18 experts when the Convention entered into force after 20 ratifications, and of 23 experts after 35 ratifications. The experts, of high moral standing and competence in relevant fields, are elected by States Parties from among their nationals and serve in their personal capacity. The Committee considers reports to be submitted by States Parties on the legislative, judicial, administrative or other measures which they have adopted to give effect to the Convention's provisions and on the progress made in this respect. The specialized

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agencies are entitled to be represented at the consideration of the implementation of such provisions of the Convention as fall within the scope of their activities. The Committee may invite specialized agencies to submit reports on the implementation of the Convention in areas of their competence. In article 29, arbitration is referred to as an optional means of dispute settlement between States Parties in respect of the interpretation or application of this Convention.

4. In the International Labour Organisation, a regular and diversified system of supervision exists which covers all conventions and extends even to unratified conventions and recommendations. Furthermore, there are regular as well as special procedures for the examination of complaints:

(a) The main supervisory body is the Committee of Experts on the Application of Conventions and Recommendations, which currently has 20 members and is composed of persons with the highest qualifications in the legal and social fields who are independent of Governments and appointed in their personal capacity. This independence is underlined by the fact that the experts are appointed by the Governing Body on the proposal of the Director-General of ILO. Every State has to report to ILO on the measures which it has taken to give effect to the provisions of conventions which it has ratified. Owing to the continuing increase in the number of reports, there is now a varying periodicity at which reports fall due at annual, two-year, three-year or even four-year intervals. The Committee of Experts appraises the application of conventions in the light of Governments' reports, laws and regulations and any other relevant information such as observations by employers' and workers' organizations. The Committee of Experts' reports are presented for examination to the International Labour Conference which, at each of its annual sessions, sets up a committee for that purpose consisting of representatives of Governments and of national organizations of employers and workers;

(b) The Constitution of ILO makes provision for two kinds of complaints procedures. First, a representation may be made by an employers' or workers' organization on the ground that a State has failed to secure the effective observance of a convention to which it is a party. Second, a complaint proper may be made by a State if it is not satisfied that another State effectively observes any convention which both have ratified. It is not required that the State filing the complaint, or any of its nationals, should have suffered direct prejudice. The Governing Body itself may initiate this procedure against a member State in the case of a ratified convention, either of its own motion or on receipt of a complaint from any delegate to the International Labour Conference, who may be from a ratifying or non-ratifying State. The Governing Body may appoint a Commission of Inquiry to make a thorough examination of the matter;

(c) In the field of freedom of association, special machinery was set up by ILO following Economic and Social Council resolution 277/10 of 17 February 1950. Complaints alleging infringements of freedom of association may be made even against States which have not ratified the ILO conventions of 1948 and 1949 on the subject. This is because the ILO Constitution, which the States members of the organization have accepted, lays down the principle of freedom of association, which should be observed by virtue of membership alone. The special machinery

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consists of the Governing Body Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association composed of qualified persons of independent status. The Fact-Finding and Conciliation Commission can in principle be seized of a case only with the consent of the Government against which the complaint is made.

5. If, then, there are reasons and precedents for international supervision of the application of the Convention concerned with all migrant workers and members of their families, three basic and interrelated questions have to be resolved:

(a) What kind of reports procedures would be suitable?

(b) What kind of procedures concerning allegations of non-observance by States Parties would be desirable?

(c) What kind of supervisory bodies could take responsibility for examining the reports and/or complaints effectively and in a spirit of international co-operation and friendship?

These questions will now be elucidated in turn.

6. Compliance with the obligations flowing from the Convention can be ascertained by documentary evidence submitted by States Parties that indicates the position of their law and practice in regard to the matters dealt with in the Convention and shows the extent to which effect has been given to its various provisions or the difficulties encountered which affect the degree of fulfilment of the obligations incurred. In view of the interwoven and cumulative nature of parts II, III, IV, and V of the proposed Convention, it would be impracticable to report in stages as in the case of the International Covenant on Economic, Social and Cultural Rights. To report on the whole of the Convention doubtlessly represents a considerable amount of work for the States concerned as well as for the supervisory body which is to examine these reports. Therefore, it is proposed that reports cover the implementation of the whole of the Convention but that a reasonably long periodicity be fixed (see art. VI-2).

7. The supervisory body could not fulfil its functions if it were merely to study the reports. It must be able to appraise and comment on the conformity of national law or practice with the international Convention. Specific comments should be addressed to whichever State Party may be concerned. General observations on, for example, important discrepancies found in several countries should be furnished to the Economic and Social Council and the General Assembly to inform them of the state of law and practice in this field. In that context there would be advantage in calling on the experience of specialized agencies of the United Nations. The proposed reporting procedure follows in a general way the precedents of the two Covenants but draws particularly on the latest relevant United Nations human rights instrument, the Convention on the Elimination of All Forms of Discrimination Against Women (see art. VI-4).

8. Allegations of non-observance of the Convention by States Parties can, of course, be settled outside its framework by negotiation, and States remain free to

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agree on any arbitration procedure or to refer a dispute to the International Court of Justice. However, the co-sponsoring countries feel that the Working Group should provide for complaints procedures within the Convention itself, as has been judged necessary and useful under the Covenant on Civil and Political Rights, the two United Nations Conventions on the elimination of discrimination and in the International Labour Organisation generally. Concern for economy of means and effectiveness of results, particularly with a view to the amicable settlement of disputes, leads the co-sponsoring countries to propose a procedure under which complaints can be handled by the supervisory body that has responsibility for the examination of reports. In effect, this is the solution characteristic of United Nations human rights instruments. For this new Convention, it appears appropriate to provide for an inter-State complaints procedure applicable to all States Parties. In view of the broad range of the Convention's stipulations and having regard to the state of law in the field, it would seem difficult to go as far as setting up an individual complaints procedure, even on an optional basis. The wording proposed draws on the Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination (see art. VI-5).

9. As regards the supervisory body or bodies needed, one can opt for a new one or seek to utilize a body that already exists. It might be possible to assign to the Human Rights Committee mentioned in paragraph 3 above additional functions under the Convention concerned with all migrant workers and their families. Reactions to a similar suggestion made in the context of the pending Convention on torture make it highly doubtful that this solution would be acceptable. The co-sponsoring countries, which appreciate the scope of supervision possible under ILO procedures and the thoroughness and effectiveness with which they are performed, also considered the possibility of giving the ILO Committee of Experts mentioned in paragraph 4 above a major share of responsibility in supervising the application of this United Nations Convention. A number of problems stand in the way of this solution. In the end, a distinct body seemed the only reasonable option. This body, because its members undertake a critical examination of reports and assist in the solution of conflict situations, should be composed of independent experts.

10. How are the experts to be chosen? In the United Nations the current practice is to elect them from among nominees of States Parties to a particular instrument. In ILO the Director-General nominates candidates who require endorsement by the Governing Body to be selected. The Convention being considered could best be supervised if elements of the practice of both the United Nations and International Labour Organisation were combined. Therefore, it is proposed to establish an 18-member committee of independent experts, 12 of whom are to be elected by States Parties from among their nominees, while six are to be appointed by the Governing Body of ILO. The participation of ILO in the appointment of experts is, of course, subject to the agreement of the organization. The actual language of the proposal reflects the formulations and the experiences of the two Covenants and the United Nations Convention of the Elimination of All Forms of Racial Discrimination, and is also inspired by the recent United Nations Convention on the Elimination of All Forms of Discrimination Against Women (see article VI-1).

11. It would be helpful to associate ILO with the supervision of this Convention. ILO's special competence in the field of labour covers the protection of workers

when employed in countries other than their own, the regulation of the labour supply and the extension of social security measures. The two ILO Conventions most specifically concerned with migrant workers, one dating back to 1949 and the other one to 1975, have received 35 and 12 ratifications, respectively, which has yielded a great deal of experience for the ILO staff and experts. In 1980 the Committee of Experts undertook an in-depth survey of these two Conventions and the supplementary recommendations in relation to national laws and practices. (Its report has been quoted on a number of occasions in the United Nations Working Group.) Moreover, co-operation of this kind is by no means unusual in the United Nations system. Reference has already been made to the complaints procedure alleging infringements of trade union rights, where allegations received by the United Nations are forwarded by the Economic and Social Council to the Governing Body of ILO. The reports procedure under the Covenant on Economic, Social and Cultural Rights also involves ILO importantly; and the reports procedure under the Convention on the Elimination of All Forms of Discrimination Against Women similarly provides room for fruitful co-operation. Other examples are the Ad Hoc Committee on Forced Labour established by Economic and Social Council resolution 350/XII of 19 March 1951, under which three experts were appointed jointly by the Secretary-General of the United Nations and the Director-General of ILO, and the 12-member Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers, half of whom are appointed by the Executive Board of UNESCO on the nomination of the Director-General of UNESCO and the other half by the Governing Body of ILO on nomination of the Director-General of ILO.

Appendix

PART VI

Part VI-1

Application of the Convention

1. For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Their Families (hereinafter referred to as "the Committee") consisting of 18 experts of competence in the field covered by the Convention.

2. (a) Twelve members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, consideration being given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems. Each State Party may nominate one person.

(b) The remaining six members shall be appointed by the Governing Body of the International Labour Organisation.

(c) All members shall serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties not later than one month before the date of each election.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of votes of the States Parties present and voting.

5. The Secretary-General shall inform the Director-General of the International Labour Organisation of the result of the elections and shall invite the Governing Body of the International Labour Organisation to appoint the remaining members.

6. The members of the Committee shall serve for a term of four years. However, the terms of six of the elected members and three of the appointed members shall expire at the end of two years; the names of these nine members shall be chosen by lot by the Chairman of the Committee.

7. If an expert has ceased to function as a member of the Committee before the expiry of his term, the State Party which nominated the expert, or the Governing

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Body of the International Labour Organisation which appointed the expert, shall appoint another expert for the remaining part of the term. In cases where the new expert is appointed by the State Party, the appointment is subject to the approval of the Committee.

8. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

10. The Secretary-General shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

Part VI-2

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the position of their law and practice in regard to the rights recognized in the Convention and to other provisions included herein:

(a) Within one year after the entry into force for the State Party concerned;

(b) Thereafter every four years.

2. Reports shall indicate factors and difficulties, if any, affecting the implementation of the present Convention.

Part VI-3

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The Committee shall normally meet annually in order to consider the reports submitted in accordance with article 71 of the present Convention.

4. The meetings of the Committee shall be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Part VI-4

1. The Committee shall examine the reports submitted by each State Party to the present Convention and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comments made by the Committee in accordance with this article.

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2. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

3. The Secretary-General shall transmit the reports of the Committee to the Commission on Human Rights of the United Nations and to the Governing Body of the International Labour Organisation.

4. The Committee may invite the specialized agencies of the United Nations to submit information on such matters dealt with in the Convention as fall within their field of competence. The specialized agencies may participate, in an advisory capacity, in the consideration by the Committee of such matters.

Part VI-5

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. This State shall, within three months, submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If within six months of the Committee's transmission of the initial communication to the State Party concerned the matter is not adjusted to the satisfaction of both parties, either State shall have the right to request the Committee to deal with the matter in accordance with the following paragraphs of this article.

3. The Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the present Convention.

4. The Committee shall hold closed meetings when examining communications under this article.

5. In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in paragraph 2, to supply any relevant information.

6. The States Parties concerned, referred to in paragraph 2, shall have the right to be heard by the Committee and to make submissions in writing.

7. The Committee shall, within 12 months after the transmission of the initial communication under paragraph 2, submit a report:

(a) If a solution within the terms of paragraph 5 is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.

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(b) If a solution within the terms of paragraph 5 is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

The report shall be communicated to the States Parties concerned.

Part VI-6

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field covered by this Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with international agreements in force between them.

Part VI-7

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.
