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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Draft International Convention on the Protection of the Rights  
of All Migrant Workers and Their Families

Working paper submitted by Finland, Greece, Italy, Norway,  
Portugal, Spain and Sweden concerning the definitions of  
"migrant workers", contained in the revised proposal for  
part I, articles 2 and 4, and part IV, presented in  
document A/C.3/38/WG.1/CRP.5 of 26 September 1983

I. MANDATE OF THE WORKING GROUP

1. When the Working Group was established by General Assembly resolution 34/172 of 17 December 1979, it was entrusted with the task of elaborating an international convention on the protection of the rights of all migrant workers and their families. The intention of the General Assembly was not to exclude, a priori, any category of workers engaging in an economic activity in a country other than their own.

2. In proposing a general definition, the co-sponsors have made an effort to live up to this global approach, taking into account as many aspects of migration as possible.

II. PURPOSE AND THE ROLE OF DEFINITIONS

3. The purpose of any definition of the persons to whom the Convention applies is not, as such, to establish any rights for the persons concerned. Such rights are indeed granted by the substantive provisions of the Convention in reference to the various categories of persons so defined. These categories may differ in their characteristics and their needs for protection; consequently, not all the

provisions of the Convention are equally applicable to each of them. This brings about the necessity of making distinctions (e.g. between workers in a regular situation and those in an irregular situation or other categories mentioned in part IV).

4. On the other hand, if definitions are too narrowly limited there is a risk of excluding certain groups totally from the application of the Convention and depriving them of the rights provided for in its articles.

5. Finally, definitions should take into account the complexity of the migration phenomenon and the changes in its nature which are occurring over time. New categories of migrant workers are constantly emerging. The problems which may result from these changes may be even greater for the individuals concerned than those linked with more traditional forms of migration.

6. One of the basic aims of the Convention is to strengthen the human rights of migrant workers and their families in order to prevent any discrimination arising out of their specific situation. The human rights instruments so far established by the United Nations are characterized by their generality and universality. It seems to the co-sponsors that it would be a breach with this tradition if a human rights instrument in the field of migration were to exclude certain categories of migrant workers from the enjoyment of such rights.

7. Since the existing instruments in the field of migration (e.g. the European Convention on the Legal Status of Migrant Workers, ILO Conventions Nos. 97 and 143) do not cover all categories of migrant workers concerned, it is the acknowledged aim of the United Nations Convention to fill these gaps.

8. There has, for instance, been some discussion as to the rationale of including persons engaged in an economic activity on their own account in the definition of a "migrant worker". This category of workers is expressly excluded from existing international instruments, notably ILO Convention No. 143, article 11.

9. As the proposed United Nations Convention is aiming at granting basic human rights to all migrant workers, the exclusion of self-employed migrant workers would not be justified on any grounds. A person would fall into this category only in so far as the national legislation in the State of employment so permits and on the conditions it provides for.

10. It is, therefore, obvious that the text proposed by the co-sponsors is intended to extend the necessary protection granted by the Convention to these migrant workers. Such workers, being allowed to stay in the country of employment, may be led to develop a working activity not dependent on an employer. In many cases, this may be the only way to avoid unemployment and, in other cases, it may be the way to improve their economic situation.

11. The mere fact that a few of the "self-employed" migrant workers may have reached a more favourable economic position should not prevent the Convention from being applicable to the great majority who are not in such a position (e.g. peddlers, artisans, small shopkeepers, etc.).

12. To exclude them would, furthermore, exclude from the protection of the Convention the members of their families and especially their children.

III. STRUCTURE OF THE PROPOSAL MADE BY THE CO-SPONSORS

13. Articles 1, 5 and 6, as already provisionally adopted, define the scope of the Convention, its non-discriminatory applicability to all migrant workers in relation to the States concerned and in connection with the different stages of the migratory process in which the migrant worker and his family may find themselves.

14. The proposal made by the co-sponsors constitutes an attempt to meet the need for distinctions within the general definition of the migrant worker. Such distinctions derive from the very contexture of the Convention so far provisionally approved. Consequently, articles 2 and 4 of the proposal must be read in conjunction.

15. It will thus appear that a distinction between migrant workers and members of their families in a regular or in an irregular situation must be made.

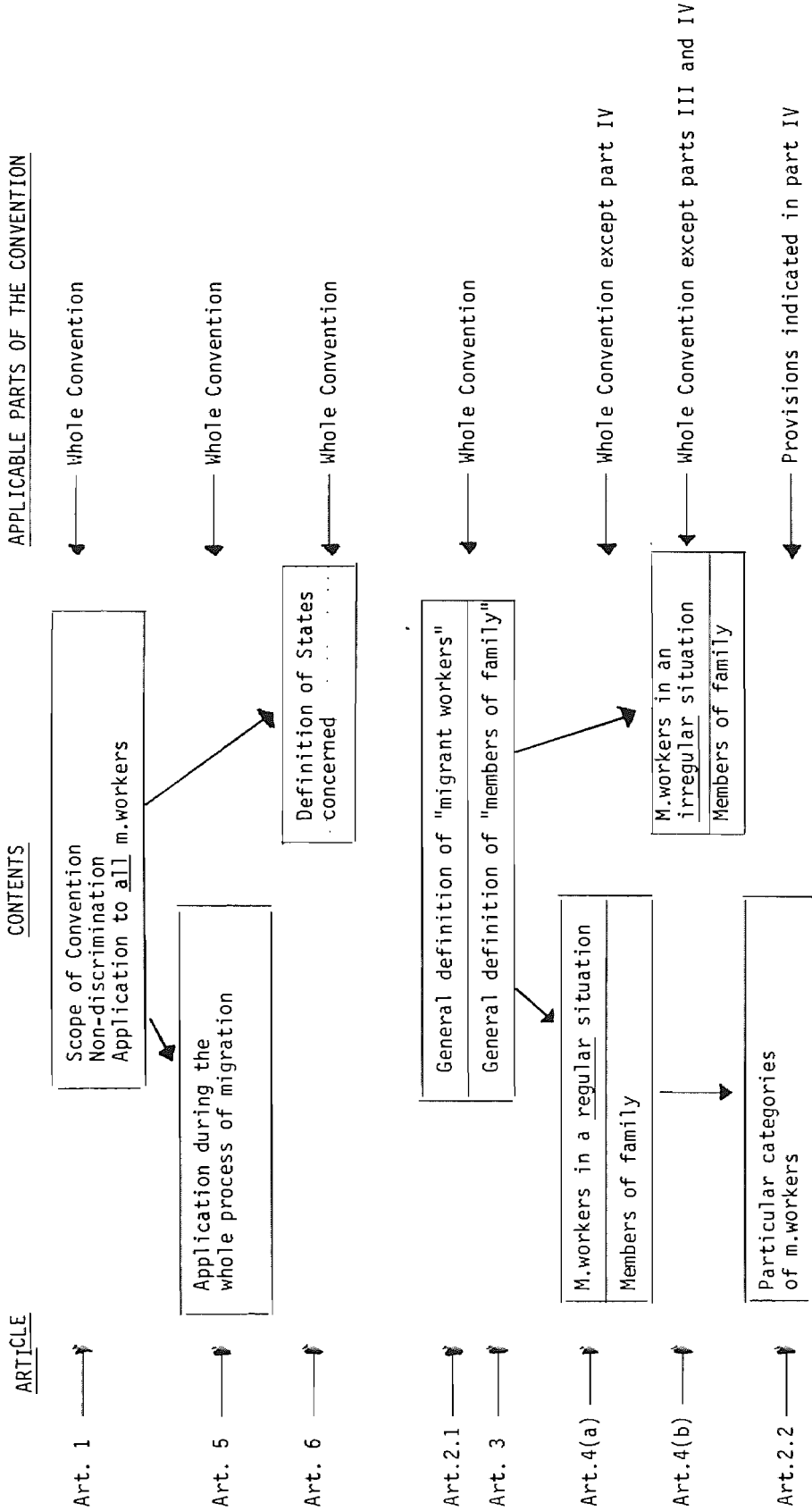
16. For migrant workers in an irregular situation the whole Convention except parts III and IV will be applicable. The whole Convention applies to migrant workers in a regular situation.

17. Nevertheless, among migrant workers in a regular situation, further categories may be distinguished, not all of the provisions of the Convention being applicable to them. Part IV is meant to indicate which provisions are applicable to each of these categories.

18. The annexed scheme is intended to clarify in a simplified manner the implications of the definitions as well as their justification.

Annex I

STRUCTURE OF THE PROPOSAL CONCERNING SCOPE AND DEFINITIONS IN RELATION  
TO THE APPLICABLE PARTS OF THE CONVENTION



Annex II

CONTENTS OF THE CONVENTION

Preamble

Part I Scope and definitions (arts. 1-6)

Part II Fundamental human rights of all migrant workers and members of their families (arts. 7-34 bis)

Part III Additional rights of migrant workers and members of their families in a [regular situation] [lawful status] (arts. 35-56)

Part IV Provisions applicable to particular categories of migrant workers and members of their families (arts. IV.1-IV.5 in the revised proposals by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden (A/C.3/38/WG.1/CRP.5 of 26 September 1983))

Part V Promotion of sound, equitable and humane conditions in connection with lawful international migration of workers and their families (arts. 62-68)

Part VI Application of the Convention (arts. 69-75)

Part VII General provisions (arts. 76-80)

Part VIII Final provisions (arts. 81-89)

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