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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Report 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

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

Vice-Chairman: Mr. Bengt LIDAL (Sweden)

INTRODUCTION

1. The Working Group on the Drafting 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 39/102 of 14 December 1984, the General Assembly, inter alia, took note with satisfaction of the reports of the Working Group (A/C.3/39/1 and A/C.3/39/4 and Corr.1 (English only)); commended it for concluding, in its first reading, the drafting of the preamble and articles, which would serve as the basis for the second reading of the draft Convention; and 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 1985 of the Economic and Social Council. The Assembly invited the Secretary-General to transmit to Governments the reports of the Working Group so as to enable the members of the Group to undertake the second reading of the preamble and the articles during the inter-sessional meeting to be held in the spring of 1985, as well as to transmit the results obtained at that meeting to the General Assembly for consideration during its fortieth session. The Assembly also invited the Secretary-General to transmit those documents to the competent organs of the United Nations and to international

organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group. Further, the Assembly decided that the Working Group should meet during the fortieth session of the General Assembly, preferably at the beginning of the session, to continue the second reading of the draft Convention.

3. In accordance with paragraphs 3 and 4 of General Assembly resolution 39/102 and prior to the fortieth session of the Assembly, the Secretary-General transmitted the results obtained during the inter-sessional meeting of the Working Group from 3 to 14 June 1985 to Governments, competent organizations of the United Nations system and international organizations concerned.

4. The Working Group has 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 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 Assembly from 18 October to 16 November 1982; (f) a third inter-sessional meeting from 31 May to 10 June 1983; (g) a fourth session during the thirty-eighth session of the Assembly from 27 September to 6 October 1983; (h) a fourth inter-sessional meeting from 29 May to 8 June 1984; (i) a fifth session during the thirty-ninth session of the Assembly from 26 September to 5 October 1984; (j) a fifth inter-sessional meeting from 3 to 14 June 1985; and (k) a sixth session during the fortieth session of the Assembly from 23 September to 4 October 1985.

5. In pursuance of General Assembly resolution 39/102, the Working Group met at United Nations Headquarters from 23 September to 4 October 1985 under the chairmanship of Mr. Antonio González de León and under the vice-chairmanship of Mr. Bengt Lidal. It held 15 meetings with the participation of delegations from all regions. Observers for the International Labour Organisation (ILO), the World Health Organization (WHO), the Economic Commission for Africa (ECA) and the Office of the United Nations High Commissioner for Refugees (UNHCR) also attended the meetings.

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

(a) Report of the open-ended Working Group during its inter-sessional meeting from 3 to 14 June 1985 (A/C.3/40/1);

(b) Report of the open-ended Working Group during the thirty-ninth session of the General Assembly (A/C.3/39/4 and Corr.1 (English only));

(c) Text of the preamble and articles of the draft international convention on the protection of the rights of all migrant workers and their families provisionally agreed upon by the Working Group during the first reading (A/C.3/39/WG.1/WP.1);

(d) Cross-references in the draft international convention on the protection of the rights of all migrant workers and their families (A/C.3/40/WG.1/CRP.3);

(e) Working paper concerning self-employed migrant workers submitted by Finland, Greece, India, Italy, Norway, Spain and Sweden, subsequently joined by Portugal, containing proposals for additional provisions in article 2 and part IV of the draft international convention (A/C.3/40/WG.1/CRP.6);

(f) Letter dated 21 August 1985 from the Vice-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 addressed to the Chairman of the Working Group (A/C.3/40/WG.1/CRP.7);

(g) Working paper submitted by the United States containing a proposal relating to article 2 of the draft International Convention (A/C.3/40/WG.1/CRP.8);

(h) Proposal by Australia for new subparagraph of article 2.2 of the draft International Convention (A/C.3/40/WG.1/CRP.9);

(i) Working paper submitted by Denmark: revised proposal to replace article 89 in document A/C.3/39/WG.1/WP.1 (A/C.3/40/WG.1/CRP.11).

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

(a) Previous reports of the Working Group concerning the first reading (A/C.3/35/13; A/C.3/36/10; A/C.3/37/1; A/C.3/37/7 and Corr.1 and 2 (English only); A/C.3/38/1; A/C.3/38/5 and A/C.3/39/1);

(b) Report of the Secretary-General on policies related to issues concerning specific groups: the social situation of migrant workers and their families (E/CN.5/1985/8);

(c) The observations by the International Labour Office on the text provisionally agreed upon during the first reading (A/C.3/40/WG.1/CRP.1);

(d) Comments of the Government of Colombia on the report of the Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families (A/C.3/40/WG.1/CRP.2);

(e) Proposed text for articles 70 and 72 submitted by the delegation of Mexico (A/C.3/40/WG.1/CRP.4);

(f) 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 (A/C.3/38/WG.1/CRP.5).

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

PART I

Scope and definitions

8. This part of the present report contains exclusively the results of the discussion on the provisions of the draft convention (A/C.3/39/WG.1/WP.1) during the second reading.

9. In view of the complexities of the issues involved in the definitions, the Working Group devoted a great deal of the time allocated to it to informal meetings for consultations in order to speed up its work and achieve positive results by consensus. With the procedure followed, the Working Group intermittently discussed paragraphs 2 and 3 of article 2 in order to reach a consensus on the text of the whole of article 2.

Article 1

10. It may be recalled that, during its fifth inter-sessional meeting, from 3 to 14 June 1985, the Working Group concluded its discussion on a text for article 1 on the assumption that a generally acceptable understanding had been reached (see A/C.3/40/1, paras. 121-136). However, at the 10th meeting, on 14 June 1985, in the discussion of the Working Group's draft report, it became apparent that that was not the case. The Working Group therefore resumed its discussion on article 1 at the beginning of its present session. The text of article 1 as it stood read as follows:

"Article 1

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

11. In this connection, at the 1st meeting, on 23 September, the Vice-Chairman of the Working Group read out a letter dated 21 August 1985 which he had addressed to the Chairman of the Working Group and which was reproduced in document A/C.3/40/WG.1/CRP/7, as follows:

"Referring to the report of the open-ended Working Group on its inter-sessional meeting from 3 to 14 June 1985 (A/C.3/40/1), I have the honour to inform you as follows.

"On 7 June 1985, at its 9th and 10th meetings chaired by you, Sir, and by myself, the Working Group considered a text for article 1 of the Convention (reproduced in para. 121).

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"The text provisionally agreed upon on first reading contained two expressions in brackets, namely, in English, 'ethnic' and 'property', on which the Working Group focused its discussion (reflected in paras. 124-129), but other issues were also dealt with.

"After a long, friendly and constructive discussion, the Working Group proceeded to the adoption of a text for article 1, and you confirmed such a decision which was reflected in the Journal of the United Nations of 10 June 1985 (No. 85/108).

"When, at its 17th meeting, on 14 June 1985, the Working Group discussed the draft report (A/C.3/40/WG.1/CRP.5 and addenda), which I had the honour to submit for adoption, it appeared that the required consensus for the adoption of a text for article 1 had not been at hand.

"The lack of consensus came as a surprise to the Working Group and to myself, and we spent a great deal of time trying to find out whether the situation had been caused by disagreement on the substance of the provision, by the imperfection of the draft report, or by interpretation difficulties at the time of the adoption of the article. The problem remained unresolved, though.

"Even if the disagreement with regard to the word 'property' and to the words proposed for the other language version did reflect substantive differences of opinion, it would not have been possible to find a solution at that stage: the substantive discussion had been concluded, and we were in the process of adopting the Working Group's report.

"If, on ther other hand, the confusion was due to linguistic or interpretation problems, which seems more probable, the time at our disposal did not allow an exhaustive discussion.

"As a matter of fact, the time spent on the formulation of article 1 for inclusion in the report jeopardized the adoption of the report as a whole. In the view of such a risk, I proposed the 'solution' reflected in paragraph 136 of the report, adding that I, as Vice-Chairman, would send a letter to you, Sir, and inform you and, through you, the Working Group, of the development with regard to article 1. The Working Group accepted the 'solution' implying that it will resume its discussion on article 1 at its next session.

"In the course of the debate, some delegations had pointed out 'that the word "property", as contained in the English version of the International Covenant on Civil and Political Rights, might have a different meaning in other linguistic versions of the Covenant' (para. 124).

"Without trying to interpret the meaning of the word 'property', I note that the French version of the Covenant (or, indeed, both Covenants) uses the word 'fortune' where the English uses 'property'. Furthermore, during the course of the debate my attention was drawn to the fact that the Spanish version of the Covenant uses the expression 'posición económica' where the English has 'property' and the French 'fortune'. This I find especially noteworthy, since the English draft text for article 1 contains the expression 'economic position' in addition to the word 'property'.

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"This leads me to believe that, in the future, we shall have to check very carefully all the linguistic versions of the Covenants to which constant references have been made throughout the first reading of the draft text.

"Finally, Sir, I wish to draw your attention to paragraph 135 of the report, in which the representative of Morocco placed on record that her delegation's acceptance of article 1 was subject to a satisfactory agreement concerning article 2.

"In the light of all this, I would like to suggest that the Working Group, at its next session, resume its discussion on articles 2 and 1 in that order.

"In conclusion, I submit that my letter to you be made available to the Working Group at the beginning of its next session."

12. At the 2nd meeting, on 23 September, the Chairman confirmed the adoption of article 1 on the understanding that, in all languages the word "property" would be translated as in article 2, paragraph 1, of the International Covenant on Civil and Political Rights, as follows:

"Article 1

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

13. The representative of Morocco placed on record her reservation as regards the translation of the word "property" by the word "fortune" in the French version. She insisted that, as far as article 1 was concerned, only the Spanish version in which the word "property" was translated as "posición económica" corresponded to the interpretation which her delegation attributed to the word "property" in article 1 as adopted by the Group.

14. The representative of France also placed on record that the acceptance of certain expressions and, in particular, the absence of any exclusion based on nationality or family status included in the article should not prejudice the position of his delegation when other relevant articles of the draft Convention were discussed at a later stage.

15. While regretting that the deletion of the words "economic position" might open the door for discrimination on the basis of income, the representative of the Federal Republic of Germany stated that his delegation would not oppose the adoption of a text corresponding to that of the International Covenant on Civil and Political Rights.

Article 2.2

16. The Working Group considered paragraph 2 of article 2 at its 2nd to 13th meetings, from 23 September to 2 October 1985, on the basis of the following text provisionally agreed upon during the first reading and contained in document A/C.3/39/WG.1/WP.1, which reads as follows:

"2. For the purpose of this Convention:

"(a) Frontier workers are 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 or at least once a week;

"(b) Seasonal workers are migrant workers when they are employed or engaged in work in a State of which they are not nationals and which work by its character, is dependent on seasonal conditions and can therefore be performed only during part of the year;

"(c) Seafarers, including fishermen, are 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 offshore installations are 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 are 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;

"(f) Project-tied workers are migrant workers when they have been admitted to the State of employment for a period of time on the basis of a work contract with an [enterprise or] employer carrying out in that State a specific project that by its nature is limited in time."

17. The Working Group also had before it a working paper concerning self-employed migrant workers (A/C.3/40/WG.1/CRP.6) submitted by Finland, Greece, India, Italy, Norway, Spain and Sweden. Portugal also joined the countries sponsoring the above-mentioned working paper. The following proposal for an additional subparagraph (g) of paragraph 2 of article 2 was included in document A/C.3/40/WG.1/CRP.6:

"(g) Self-employed persons are migrant workers when they are engaged otherwise than under a contract of employment, in a State of which they are not nationals in an economic activity essentially occupying themselves and members of their family."

18. In introducing the proposals contained in document A/C.3/40/WG.1/CRP.6, the representative of Finland stressed that in specifying the situations where the migrants might find themselves, the co-sponsors had looked into the problems from the viewpoint of the individuals whom they intended to protect in the Convention.

Referring to the mandate of the Working Group, the co-sponsors emphasized that the provisions of the Convention had to be given universal application and that they had to account for all the situations in which the migrant workers might find themselves. They could not see the difference between a small shopkeeper, street-vendor or a family restaurant-owner and the person who worked on an assembly line in a car factory. The only difference they could see was that their situation was often regulated by a legislation different from labour laws. They also felt that the family of the street-vendor or small shopkeeper, which included his wife and children, should not be deprived of protection merely because the worker had chosen another life-style and another way of earning his living than the way of life of a wage-earner. The representative of Finland added that the legislation in most countries in fact made it possible for the individual to choose different ways of producing the same goods and services. Therefore, the co-sponsors felt that it would be necessary to include the category of self-employed migrant workers in the Convention to assure them adequate protection which they did not enjoy under other international instruments. It was the feeling of the co-sponsors that the doubts expressed by some delegations about their inclusion in the Convention were due to an uncertainty about the real content of the provisions which would be applicable to self-employed persons and that those doubts could now be removed.

19. In the view of the co-sponsors, "directors" of big firms, being salaried employees of their company, would not fall under the category of self-employed. They would be protected by provisions flowing from the general definition in the Convention. The co-sponsors emphasized that the full protection of the rights of self-employed workers must be guaranteed in accordance with the rights of each State to determine the basic criteria for admission, stay and economic activity. They stated that parts II and III of the Convention would also be applicable to the self-employed worker with the exception of such provisions which could not be applicable to them owing to their specific characteristics, such as rights arising out of a work contract, which would not be applicable to a self-employed worker.

20. Document A/C.3/40/WG.1/CRP.6 also contained a proposal to include an article 62 bis in part IV of the draft Convention with specific provisions on self-employed migrant workers as follows:

"Self-employed migrant workers

"(1) Self-employed migrant workers as defined in article 2 (2) (g) shall be entitled to all the rights provided for in parts II and III of the Convention with the exception of such rights which are exclusively applicable to workers having a contract of employment.

"(2) Without prejudice to articles 37 and 52 of the present Convention, the termination of the economic activity of the self-employed migrant worker shall not in itself imply the withdrawal of the authorization for him or for the members of his family to stay or to engage in a remunerated activity in the State of employment.

"(3) The self-employed persons shall enjoy equality of treatment with self-employed nationals of the State of employment in respect of access to any state subsidies or other support measures affecting their activity."

21. At the 2nd meeting, on 23 September, the representative of the United States submitted a proposal (A/C.3/40/WG.1/CRP.8) incorporating a distinction between permanent and temporary migrant workers and proposing restructuring of article 2, notwithstanding other substantive concerns of the United States with regard to that article. According to the proposed reorganization of article 2, the text would read as follows:

"1. For the purposes of this Convention, the term 'migrant worker' refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

"2. For the purposes of this Convention:

"(a) The term 'migrant worker' includes migrant workers who are documented or in a regular situation [lawful status], as defined in article 4 (a), and migrant workers who are non-documented or in an irregular situation [unlawful status], as defined in article 4 (b);

"(b) The term 'migrant worker in a regular situation [lawful status]' includes both permanent migrant workers and temporary migrant workers:

"(i) Permanent migrant workers are migrant workers who have been admitted to a State of which they are not nationals for an unrestricted period of time;

"(ii) Temporary migrant workers are migrant workers who have been admitted to a State of which they are not nationals for a restricted period of time;

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

"(i) Persons [performing official functions] 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;

"(ii) Persons [performing official functions] 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;

"[(iii) Persons whose labour relations with an employer were not established in the State of employment [receiving State];]

"[(iv) Persons whose main earnings do not originate from the State of employment [receiving State];]

"(v) Persons taking up residence in a country different from their State of origin as investors [or who establish upon arrival in that country an economic activity in which they act as employers];

[(vi) Refugees and stateless persons;]

[(vii) Students and trainees.]"

"Article 2 bis

"For the purposes of this Convention:

"(a) Frontier workers are persons who are engaged in a remunerated activity in one State but maintain their habitual residence in the neighbouring territory of another State to which they normally return every day or at least once a week;

"(b) Seasonal workers are persons who are employed, or engaged in work, which work, by its character, is dependent on seasonal conditions and can therefore be performed only during part of the year;

"(c) Seafarers are persons who are engaged in a remunerated activity on board a vessel other than a warship;

"(d) Workers on offshore installations are persons who are engaged in a remunerated economic activity or offshore installations;

"(e) Itinerant workers are persons who, having their permanent residence in one place, have to go for purposes of their occupation to another place for a short period;

"(f) Project-tied workers are persons who are engaged in a remunerated activity for a period of time on the basis of a work contract with an (enterprise or) employer carrying out a specific project that by its nature is limited in time."

22. In connection with the proposal of the United States to include a distinction between temporary and permanent migrant workers, several delegations requested clarification as to the intention of such an inclusion. They also wished to know the corresponding provisions which the delegation of the United States wished to propose in part IV of the draft Convention. The representative of the United States reserved his comments on the distinction between temporary and permanent migrant workers for the discussion on article 4.

23. At the 3rd meeting, on 24 September, the representative of Australia submitted a proposal (A/C.3/40/WG.1/CRP.9) introducing the following new subparagraph (h) in paragraph 2 of article 2:

"(h) The term 'specific employment worker' refers to a person who has been admitted to a State of employment for a designated period of time to occupy a specific employment position or to undertake specific work."

24. With regard to the Australian proposal, the representatives of Morocco and the Federal Republic of Germany expressed their concern that enlarging the scope of application to other categories of workers would go beyond the mandate of the Working Group. Other groups of workers were in fact covered by other international human rights instruments. Nevertheless, the representative of the Federal Republic of Germany supported the Australian proposal, while stressing that, in conformity with his delegation's general attitude, the new category should be listed among the exclusions. The representative of Finland and other delegations also raised their doubts with respect to the proposal on the grounds that those workers were already covered by the general definition of migrant workers.

25. At the same meeting, the representative of Italy proposed that paragraph 2 of article 2 should indicate the persons to whom the Convention applied and that paragraph 3, which referred to exclusions, should become a separate article.

Article 2.2, introductory phrase

26. The Working Group discussed the introductory phrase of paragraph 2 at its 2nd to 4th meetings, on 23 and 24 September.

27. Several representatives reiterated the view expressed during the inter-sessional meeting of the Working Group in June 1985 that the purpose of paragraph (2) of article 2 was not to accord rights, but simply to give definitions and to serve as a kind of dictionary for the understanding of subsequent provisions of the draft Convention. In that connection, some delegations expressed the opinion that the introductory phrase of paragraph 2 could be deleted.

28. While commenting on the list of the special categories to be included in the Convention, the representative of Senegal suggested that the substantive questions of definitions should be tackled prior to the listing of the different categories of migrant workers concerned.

29. The representatives of Yugoslavia and Cape Verde recalled their proposals made during the June 1985 meeting of the Working Group (A/C.3/40/1, paras. 186 and 197 respectively), while the representative of Italy expressed his preference for the discussion to be based on the compromise text which had emerged at the Group's previous session (A/C.3/40/1, para. 196), reading as follows:

"For the purposes of the relevant provisions of this Convention, the term 'migrant worker' also includes:

"(a) Frontier workers who engage in a remunerated activity in one State but maintain their habitual residence in the neighbouring territory of another State to which they normally return every day or at least once a week."

30. With respect to the definition of "frontier workers" and "seafarers", the representative of Australia said he might have to make a declaration at a later stage to the effect that traditional inhabitants in the border areas between Australia and Papua New Guinea, who were covered under the bilateral Torres Strait Treaty between Australia and Papua New Guinea, were not frontier workers or

seafarers as defined in the Convention. Under that bilateral agreement, both Papua New Guinea and Australia did not consider the traditional inhabitants as migrant workers.

31. With reference to the phrase "to which they normally return every day or at least once a week", the representative of Italy stated that, in his view, the phrase, as worded, was superfluous on the grounds that, when a frontier worker returned every day to his habitual residence, he implicitly did so every week. In that connection, the representative of Morocco suggested replacing the phrase with the words "to which they return every day or at least on a regular basis". The representative of Yugoslavia reiterated his proposal "to which they return normally once a week". Upon the suggestion of the representatives of the United States and France, it was agreed to replace the words "or at least" by the words "and at least".

32. The question was raised whether the categories of workers mentioned in paragraph 2 of article 2 were simply categories of migrant workers or whether they were sub-categories of migrant workers as defined in paragraph 1 of article 2. The Chairman pointed out that the definition of "migrant worker" as adopted in paragraph 1 did not exclude the special categories mentioned in paragraph 2.

33. In the light of the debate, various delegations questioned the necessity of having an introductory phrase. While some delegations considered the possibility of not having an introductory phrase in the text, others felt that the introductory phrase, as it stood, needed to be revised and moved to another part of the text. Consequently, the Working Group decided to hold informal consultations, as a result of which the suggestion was made to place the introductory phrase "For the purpose of this Convention" at the beginning of article 2, followed by the already adopted definition of "migrant worker" in paragraph 1, as well as the other definitions in paragraph 2. The understanding of the Working Group was that the suggestion which emerged from the informal consultations was acceptable.

Article 2.2 (g)

34. The Working Group considered a text for article 2.2 (g) at its 2nd to 11th meetings, from 23 September to 1 October 1985.

35. At its 5th meeting, on 25 September, and after some informal consultations, the Working Group had before it a revised text for article 2.2 (g) which the Vice-Chairman of the Group read out to the Group as follows:

> "A self-employed person is considered a migrant worker when he is engaged in a remunerated activity, in a State of which he is not a national, otherwise than under a contract of employment."

36. While introducing the text, the Vice-Chairman stated that a note should be added to the paragraph stating that it would be further explained and qualified in part IV of the Convention.

37. During the consideration of the text, the representative of the USSR stated that, in his understanding of the procedure followed by the Working Group, the adoption of any individual paragraph was provisional in the sense that it was subject to the adoption of article 2 as a whole. Turning to article 2, paragraph 1, he therefore suggested inserting the words "in accordance with the present Convention" between the words "the term 'migrant worker' refers to a person who" and the words "is engaged".

38. With reference to the proposal by the USSR, various delegations expressed their objection to reopening a substantive debate on article 2.1 which had already been adopted. Some delegations, including that of the United States, shared the view that the definitions in part I, though adopted, remain subject to revision in the light of subsequent negotiations on the substantive provisions of the Convention.

39. In view of the concern expressed and taking into account the corresponding request by the Chairman, the representative of the USSR in a spirit of co-operation agreed to the inclusion of his proposal in the report of the Working Group instead of its incorporation in paragraph 1 in square brackets.

40. Regarding the proposed text for article 2.2 (g) on self-employed persons, the representatives of Morocco, Tunisia, Senegal, Algeria, Yugoslavia and Zimbabwe expressed their concern over the broad scope of the definition of the term "self-employed workers". They said that there was a need to characterize the type of self-employed workers if such a category of worker were to be included in the Convention. They stressed that, since the mandate of the Working Group was to draft an instrument for the protection of vulnerable groups of migrant workers, by extending such protection to self-employed persons or investors the Working Group would deviate from its purpose. They stressed that self-employed persons in a higher economic position, such as restaurant-owners, investors or other categories of workers in a higher economic position were already covered in other human rights instruments. Therefore, they strongly objected to extending the application of the Convention to persons who enjoyed higher economic positions. The representative of Morocco reiterated her previous position that persons engaged in an economic activity as employers should in any case be excluded from the present Convention.

41. The representative of the Federal Republic of Germany stated that if the authors of the text intended to protect self-employed workers because they were economically weak, such a criterion was not within the mandate of the Working Group for the inclusion of self-employed workers in the Convention. Further, he pointed out that, if a category was included and then later the Group decided to exclude part of it, that would establish a kind of discrimination. Consequently his delegation requested that self-employed workers be excluded completely from the scope of the Convention.

42. Speaking in objection to the exclusion of self-employed persons from the present Convention, the representatives of Italy, Sweden, Finland and Greece explained that what they had in mind when referring to self-employed persons was that, as the mandate of the Working Group was to draft an instrument for the protection of all migrant workers regardless of the situation in which they might find themselves, they felt that the self-employed persons deserved particular consideration. They added that, by self-employed persons, they meant people who

developed their own economic activity employing members of their families or others such as hamburger-makers, craftsmen, street-vendors, restaurant-owners and shop-keepers. As regards the differentiation within that category of workers, the representative of Italy expressed his opposition to setting up a distinction between self-employed persons in a lower economic position and those in a higher one.

43. After some discussion, the Working Group agreed to hold informal consultations prior to its 6th meeting.

44. As a result of the informal consultations, the Working Group had before it a revised text for article 2.2 (g) relating to self-employed persons as follows:

> "(g) A self-employed person is considered a migrant worker when he is engaged in a remunerated activity, in a State of which he is not a national, otherwise than under a contract of employment, and derives his principal income from this activity and [normally] works there with the help [only] of members of his family or with the help of occasional outside labour, and who does not permanently employ other workers."

45. The representative of Yugoslavia suggested amending the text which had emerged from the informal consultations by adding at the end the words "essentially occupying himself and members of his family".

46. With a view to facilitating the acceptance of the revised text, the Chairman suggested deleting the words "normally" and "only" (both in brackets in the text) and adding the word "occasionally" before the words "works there with the help", it being understood that the word "occasional" would also be deleted.

47. The representative of Greece expressed his preference for retaining the word "normally" and replacing the words "with the help [only] of members of his family" by the words "with the help of members of his family".

48. The representative of the Netherlands stated that he did not see any justification for maintaining a subparagraph on self-employed workers.

49. The representative of Australia expressed his difficulty over the phrase "and derives his principal income from this activity and [normally] works there with the help [only] of members of his family or with the help of occasional outside labour, and who does not permanently employ other workers". He suggested replacing the words "his family or with the help of occasional outside labour" by the words "his family and/or with the help of occasional outside labour".

50. The representative of Morocco suggested replacing the word "normally" by "eventually". The representative of Senegal proposed deleting the word "principal" before the word "income".

51. The representative of the Federal Republic of Germany reiterated his delegation's objection to including a clause for the protection of self-employed persons in the Convention. He stated however that, in a spirit of co-operation, he would not block a consensus, but would be satisfied to see his position reflected in the report.

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52. The representative of Norway expressed his regret over the restrictive definition of the term "self-employed persons" in the revised text. Supported by the representative of Italy, he proposed deleting the words "and who does not permanently employ other workers", as they felt that such a phrase was redundant.

53. While explaining his difficulty with the present text, the representative of France stated that the text needed more objective elements and that he could accept its first part, reading as follows:

> "A self-employed person is considered a migrant worker when he is engaged in a remunerated activity, in a State of which he is not a national, otherwise than under a contract of employment, and derives his principal income from this activity."

54. The representative of Finland stated that there was some difficulty in eliminating the word "principal". However, the co-sponsors needed first to reflect upon the effect of such an elimination.

55. With a view to reaching a consensus, the Chairman suggested replacing the words "derives his income from this activity" by the words "derives his living from this activity".

56. After a lengthy debate, the representative of Greece, in a spirit of compromise proposed the following new text, which the Chairman read out:

> "A self-employed person is considered a migrant worker when he is engaged in a remunerated activity, otherwise than under a contract of employment, in a State of which he is not a national, and derives his living from this activity, alone, or with the help of members of his family, and/or with occasional help from outside labour."

57. The representative of France referred to his statement made in June 1985 as regards self-employed persons and stated that the difficulty for his delegation would be to set up criteria for making a distinction between self-employed persons occupying high economic positions and those in an average or smaller economic position. However, it would not be acceptable to his delegation to set a distinction between the subcategories of self-employed persons. In support of that view, the representatives of Italy and the Netherlands stressed that their delegations would not be in favour of establishing a discriminatory criterion as concerned the subcategories of self-employed persons.

58. After some discussion, the Chairman asked the representative of France to clarify his delegation's position as regards its objection to the inclusion of the last phrase "normally working alone or together with members of his family".

59. In reply, the representative of France stated that he could not withdraw his objection. He therefore proposed putting his objection as well as the entire subparagraph in square brackets.

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60. The representative of France stated that his delegation had requested that subparagraph (g) of article 2.2 be put in square brackets for the following reasons: (a) the delegation of France, since the beginning of the work of the Working Group, had constantly advocated a broad definition of the notion of migrant workers. That definition should include a large number of workers, salaried or non-salaried, engaged in an activity in a State other than their own; (b) the French delegation could not accept under those circumstances that the notion of self-employed workers be restricted and that the words "normally working alone or together with members of his family" be added to subparagraph (g); and (c) the French delegation would like to specify that, if such a phrase were adopted, it would add to the generally well defined notion of self-employed worker two ambiguous criteria which would be difficult to verify: on the one hand the self-employed working alone and on the other hand the self-employed working with members of his family. Those restrictive conditions resulted in introducing an unacceptable discrimination between workers engaged in the same activity.

61. The delegation of Finland pointed out that any total deletion of self-employed migrant workers would be in contradiction with the aim of the Convention which was to grant human rights to migrant workers as broadly as possible. He also pointed out that the definition of that subcategory could not be criticized on the grounds that it was restrictive since even the other subcategories defined did not cover the totality of migrant workers which might fall in those categories.

62. The representative of the Netherlands objected to the opinion expressed by the representative of Finland as far as human rights were concerned. In the representative of the Netherlands view, the Convention did not create human rights, but rather reaffirmed them for the individual categories of persons.

63. The Chairman strongly expressed his regrets that, despite all the efforts within the Group to work in a co-operative and constructive way and to achieve positive results in a spirit of consensus, one delegation was not able to support the consensus. The Chairman added that, nevertheless, the Group might encounter similar situations in the future where it would be necessary to use square brackets during the second reading exercise but he appealed to all delegations to ensure that the use of square brackets be reduced to the minimum and that the utmost be done to attain consensus in the adoption of a text.

64. The delegations of Algeria, the Byelorussian SSR, the Federal Republic of Germany, Finland, Greece, India, Mexico, the Netherlands, Norway, the USSR, the United States, Yugoslavia, placed on record their strong opposition to the use of square brackets during the second reading. They stressed that such a procedure was inappropriate and set an unfortunate precedent for the future work of the Group. They noted that there were various occasions in which they could have proposed using brackets but that since such was not the aim of the second reading exercise, they had refrained from resorting to that method.

65. The representative of the United States stated that, although his delegation would not be the first to insist on brackets on already adopted texts that had been accepted on the promise that brackets were not to be used, that option was now, in theory, open to the Group.

66. In the absence of any other alternative, the representatives of Colombia, India, Norway, Spain and Sweden expressed their preference for retaining the proposal in article 2.2 solely with the objection by the delegation of France in square brackets. However, the delegations of the Federal Republic of Germany and Morocco stated that, under the circumstances, if the subparagraph were to remain, it could only be kept entirely in brackets.

67. The representative of India recalled that the draft definition of migrant workers in the first reading and during the earlier stages of the second reading had included the self-employed. Subsequently, Sweden and other delegations had proposed a separate special category for self-employed workers. That compromise had been acceptable to other delegations. Any exclusion of that category of self-employed workers would, therefore, throw open the debate on the definition of "migrant worker".

68. The text of article 2.2 (g), as adopted, reads as follows:

> (g) [The term "self-employed worker" refers to a person who engages in a remunerated activity otherwise than under a contract of employment, and who shall be considered a migrant worker when he earns his living through this activity in a State of which he is not a national [normally working alone or together with members of his family.]]

Article 2.2 (f)

69. The Working Group considered a text for article 2.2 (f) at its 2nd to 8th meetings, from 23 to 27 September 1985, on the basis of the proposed text contained in document A/C.3/39/WG.1/WP.1, which reads as follows:

> "(f) Project-tied workers are migrant workers when they have been admitted to the State of employment for a period of time on the basis of a work contract with an [enterprise or] employer carrying out in that State a specific project that by its nature is limited in time;".

70. At its 6th meeting, on 25 September, the Working Group also had before it a revised text for article 2.2 (f) that had emerged from informal consultations and which the representative of Sweden had orally introduced, as follows:

> "(f) The term 'project-tied worker' refers to a migrant worker who has been admitted to the State of employment for a period of time on the basis of a work contract with an enterprise or employer carrying out in that State a specific project;".

71. The representative of the United States then proposed that the text be revised as follows:

> "(f) The term 'project-tied worker' refers to a migrant worker who has been admitted to a State of employment on the basis of a fixed-term contract with an enterprise or employer under which he is employed on a specific project;".

72. In this regard, the representative of France pointed out that in elaborating such a clause, some specific cases should be taken into account, namely the case of an enterprise in one State that signed a contract with an enterprise or employer in another State and when the latter brought in the State of employment labourer from a third State.

73. With regard to a question raised by the representative of Yugoslavia and other delegations as to whether there was a difference between "enterprises" and "employer" in the proposed text, the observer of the ILO, at the request of the Chairman, stated that the word "undertakings" was now used more in ILO texts but that, in practice, the term "employer" was often used and that it referred both to physical and legal persons.

74. In an attempt to meet the concerns of the United States, the representative of Italy suggested reformulating the text as follows:

> "(f) The term 'project-tied worker' refers to a migrant worker who has been admitted to a State of employment for a period of time for the realization of the project for which he is employed;".

75. After further informal consultations, the representative of Italy, at the 8th meeting, orally introduced the following revised text:

> "(f) The term 'project-tied worker' refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his employer or enterprise;".

76. After some discussion, the Working Group adopted the text as subparagraph (f) of article 2.2.

77. The representative of Algeria reserved the right to return to the definition of project-tied worker when the Working Group reached consideration of part IV during the second reading.

Article 2.2 (h)

78. At the 3rd meeting on 24 September 1985, the Working Group had before it a proposal submitted by the representative of Australia (A/C.3/40/WG.1/CRP.9) for a new subparagraph (h) in paragraph 2 of article 2, as follows:

> "(h) The term 'specific employment worker' refers to a person who has been admitted to a State of employment for a designated period of time to occupy a specific employment position or to undertake specific work;"

79. The representative of Greece pointed out that his delegation saw the Australian proposal referring to "specific employment workers" in connection with the subsequent proposal also made by Australia to be included in part IV of the Convention and whereby basic human rights granted to migrant workers were denied to that new category. He therefore objected to the adoption of such a proposal for that category of workers as formulated by Australia.

80. The representative of the United States proposed revising the Australian proposal with a view to clarifying its meaning as follows:

> "(h) The term 'specific employment worker' refers to a person who has been admitted to a State of employment for a designated period of time to occupy a specific employment position or to undertake specific work, and who is required by domestic laws of the State of employment to depart from that State when he no longer undertakes that work;"

81. While supporting the amendment by the United States, the representative of the Federal Republic of Germany suggested that it would be useful to include the idea of time limitation as the proposal recognized that the "specific employment worker" would eventually return to his State of origin without any possibility of extension.

82. As regards the limitation of time, the representative of Italy suggested that it could be limited to a period of 12 months as in various relevant instruments.

83. The representative of Greece reiterated his difficulty with the proposal by Australia, as amended. The representative of Morocco, supported by the representative of Tunisia, reiterated her position to the effect that she felt that the proposal of Australia, as amended by the representative of the United States, was still too loose and did not provide for a precise definition of what the representatives of Australia and the United States had in mind. The representative of Tunisia pointed out the danger of having a proliferation of special categories of workers to be covered under the Convention.

84. The representative of Algeria stated his objection to the inclusion of the proposal by Australia on the grounds that the category of workers concerned was already covered in the provisions of article 2.

85. After informal consultations, the representative of Australia submitted a further revised text as follows:

> "The term '[specific employment worker]' refers to a migrant worker admitted to a State of employment to occupy a specified employment position or to undertake a specified type of work with a single employer or enterprise for a predetermined period, renewable for a period or periods not to exceed 24 months each, and who is required to depart the State of employment either at the expiration of his authorized period of stay, or earlier if he no longer occupies the position or undertakes the type of work upon which his admission or extension, as the case may be, was based."

86. During the discussion, the representatives of Sweden and Finland, supported by Yugoslavia, stressed that the new revised text by Australia had not met a consensus in the informal consultations. The representative of Greece, while pointing out the difficulty of his delegation, reiterated his reservation about including the proposal by Australia in the category of workers. The representative of Morocco also expressed her difficulty in accepting the proposal by Australia. In her view, such workers could not be perceived as a special category of workers isolated from those already mentioned in article 2.2.

87. At the 11th meeting on 1 October, the representative of Australia, supported by the representatives of the United States and Canada, introduced a revised text on "specified employment worker" as a result of further informal consultations, held prior to the meeting. The text, as informally circulated to the Group, read as follows:

"(g) The term 'specified employment worker' refers to a migrant worker:

(i) Who has been sent by his employer for a restricted and defined period of time to a State of which he is not a national to undertake a specific assignment or duty;

(ii) Who engages for a restricted and defined period of time in work which requires professional, commercial, technical or other highly specialized skill;

(iii) Who, upon the request of his employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory and brief and who is required to depart from the State of employment either at the expiration of his authorized period of stay, or earlier if he no longer undertakes that specific assignment or duty or engages in that work."

88. As regards the revised proposal by Australia, the representatives of the Byelorussian SSR, India, Iraq, Mexico, Senegal, Sweden, the USSR and Yugoslavia, in a spirit of co-operation, agreed not to introduce brackets around the words in question so as not to hinder the consensus achieved in the Group. However, the majority of them insisted on their right to revert to the proposal of Australia, if adopted, during the consideration of part IV of the Convention. Some of those delegations also stated that, despite the restrictive clauses contained in the proposal, its substance was still too vague and was not needed in the present Convention as the category in question was already covered by the definition of the term "migrant worker" and other relevant definitions of special categories of migrant workers.

89. The representative of the United States stated that the proposal by Australia, like all the definitions in part I of the Convention, was subject to revision in the light of future negotiations on the substantive provisions of the Convention. He noted that, in the process of negotiation, part of the package involved an earlier proposal by the United States relating to treaty traders and investors. Consequently, he formally withdrew his more recent proposal (see para. 81 above).

90. During the debate, the representative of Finland, while pointing out that the term "specified employment worker" as contained in the proposal by Australia was still ill defined, suggested replacing it by the term "special assignment worker". The representatives of Australia and the United States objected to that proposed modification. As the term "specified employment worker" failed to satisfy many delegations, the Chairman suggested retaining it as it stood for the time being until the Group found an appropriate term.

91. The Chairman also drew the Working Group's attention to the proposal by Australia on "specific employment worker" to be included in part IV of the Convention. The proposal read as follows:

"Specific employment workers, as defined in article 2.2 (h), shall be entitled to all the rights provided for in parts II and III of the present Convention which can be applied to them by reason of their presence in the State of employment, except the provisions of articles 44, 45, 46, 53, 54 and 55."

92. The text of article 2 as adopted by the Working Group on second reading reads as follows:

Scope and definitions

Article 2

For the purpose of this Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2(a) The term "frontier worker" refers to a migrant worker who retains his habitual residence in a neighbouring State to which he normally returns every day and at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he is not a national;

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation which is under the jurisdiction of a State of which he is not a national;

(e) The term "itinerant worker" refers to a migrant worker who, having his habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his employer or enterprise;

(g) The term "specified employment worker" refers to a migrant worker:

(i) Who has been sent by his employer for a restricted and defined period of time to a State of which he is not a national to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work which requires professional, commercial, technical or other highly specialized skill;

(iii) Who, upon the request of his employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

and who is required to depart from the State of employment either at the expiration of his authorized period of stay, or earlier if he no longer undertakes that specific assignment or duty or engages in that work;

(h) [The term "self-employed worker" refers to a person who engages in a remunerated activity otherwise than under a contract of employment and who shall be considered a migrant worker when he earns his living through this activity in a State of which he is not a national [normally working alone or together with members of his family.]]

Article 3

93. The Working Group considered a text for article 3 at its 7th to 13th meetings, from 26 September to 2 October 1985, on the basis of article 2, paragraph 3 contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"3. The term 'migrant worker' excludes:

"(a) Persons [performing official functions] 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 [performing official functions] 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;

"[(c) Persons whose labour relations with an employer were not established in the State of employment [receiving State];]

"[(d) Persons whose main earnings do not originate from the State of employment [receiving State];]

"(e) Persons taking up residence in a country different from their State of origin as investors [or who establish upon arrival in that country an economic activity in which they act as employers];

"[(f) Refugees and stateless persons;]

"[(g) Students and trainees.]"

94. At the same meeting, on 26 September, the representative of Finland suggested that paragraph 3 of article 2 should become a separate article, since article 2 was a sort of dictionary containing definitions, while paragraph 3 referred to exclusions from those definitions. He also suggested that the introductory phrase of such a separate article should read as follows:

"This Convention is not applicable to:"

95. During the debate, the Working Group decided that paragraph 3 of article 2 would be treated separately as article 3.

96. The representative of the Federal Republic of Germany reiterated the position that his delegation would prefer to have included in paragraph 3 the categories of workers mentioned in paragraph 2 of article 2. However, in a spirit of co-operation, he did not wish to press amendments to that effect.

Article 3 (a) and (b)

97. At the same meeting, the representative of the USSR proposed replacing subparagraphs (a) and (b) of article 3 by the following three subparagraphs:

"The term 'migrant worker' excludes:

"(a) Persons employed by international organizations or agencies;

"(b) Persons sent by a State to another State on official missions in accordance with general international law and international agreements or conventions;

"(c) Persons who, in a State of which they are not nationals and with the consent of this State are to be engaged, are engaged or have been engaged in a remunerated activity in accordance with specific bilateral or multilateral international agreements or conventions."

98. At the same meeting, the representative of the USSR revised his original proposal for new subparagraph (c) as follows:

"(c) Persons employed by the State of which they are nationals or on its behalf or by its juridical or physical person in accordance with specific agreements with the receiving State for co-operation and development or which specifically exclude such persons from the category of migrant workers."

He said that the terms "international agreement", "international convention" and "specific agreement" do not include bilateral or multilateral agreements or conventions on migrant workers.

99. During the ensuing debate, the representative of the USSR pointed out that it should be spelled out clearly that international civil servants were not migrant workers and at the same time their status was clearly different from that of diplomats and other persons performing official functions according to other international agreements.

100. With regard to subparagraph (c) proposed by the USSR, some speakers expressed their scepticism and pointed out that such a provision would actually exclude the application of the Convention to persons covered by bilateral or multilateral agreements currently in force. In fact, most migration movements were currently regulated by agreements. One representative suggested that a clause could be included at an appropriate place in the Convention stating that, in cases where bilateral or other agreements accorded more beneficial status to migrant workers, such agreements would prevail.

Article 3 (c)

101. Turning to subparagraph (c) as it had emerged from the first reading, several speakers pointed out that the subparagraph posed a problem with States that granted work permits to workers prior to entering their territory. At the 7th meeting, on 26 September, the Working Group decided to delete subparagraph (c).

102. The representative of the Federal Republic of Germany agreed to the deletion while reiterating his delegation's preference for including in article 3 the categories mentioned in paragraph 2 of article 2.

Article 3 (d)

103. With regard to subparagraph (d), several representatives pointed out that that provision would actually exclude from the scope of the Convention numerous migrant workers who in fact managed to have earnings in their own country. At the 7th meeting, on 26 September, the Working Group decided to delete subparagraph (d).

Article 3 (e)

104. At the 7th meeting, on 26 September, the representative of Greece proposed deleting the words between square brackets, so that subparagraph (e) would read as follows:

> "(e) Persons taking up residence in a country different from their State of origin as investors;"

105. The Chairman suggested that further discussion on subparagraph (e) should be suspended until the outcome of deliberations on definitions. The representative of France stated that his delegation felt that the Working Group should define "investor" so as to prevent any misrepresentation.

106. At the 10th meeting, on 1 October, the representative of the United States introduced a new proposal to be added at the end of subparagraph (e) which would

refer to a small category of persons called "treaty traders and investors". The text of his proposal was as follows:

> "(e) ... or persons admitted to a State of which they are not nationals to engage in international trade or investment, principally between the State of employment and the person's State of origin, pursuant to a bilateral treaty of friendship, commerce and navigation in force between the two States;"

107. The Chairman suggested that, since the proposal of the United States referred to a limited category of persons, it could form a separate paragraph and be discussed separately and that subparagraph (e) should remain as adopted. The Working Group agreed to the Chairman's suggestion.

108. Regarding the proposal by the United States, the delegations of Finland and Mexico expressed the view that since investors were already excluded under subparagraph (e), it would seem superfluous to refer to that small category in a separate subparagraph. It was also felt that the suggestion was closely related to subparagraph (b). The representative of the Federal Republic of Germany supported the proposal of the United States.

109. The representative of the United States said that his proposal covered private traders while subparagraph (b) referred to co-operation agreements between States. In reply to a question, he said that the number of treaty traders in his country was in the tens of thousands and that a separate visa category applied to those persons.

110. At the 13th meeting, on 2 October, as a result of informal consultations, the Working Group adopted subparagraph (e) concerning investors, as follows:

> "(e) Persons taking up residence in a State different from their State of origin as investors;"

111. In view of the revised text concerning specific employment workers which took into account the concern of the delegation of the United States, the representative of the United States withdrew his proposal (see para. 107 above).

Article 3 (f)

112. The Chairman recalled that most delegations agreed with the exclusion of refugees from the scope of the Convention because those persons had a specific international status. It seemed, however, necessary to qualify that exclusion by adding the words "as long as they are covered by international law", because not all countries recognized all refugees as such.

113. The representative of Italy pointed out that, in fact, international conventions on refugees and stateless persons included very little with regard to work, and the treatment prescribed therein for refugees was in accordance with the most favourable treatment given to foreigners. He expressed the view that refugees and stateless persons needed neither to be expressly included nor excluded from the Convention and opted for the deletion of subparagraph (f). The representatives of

France and the Federal Republic of Germany also expressed preference for deleting that provision.

114. The representative of the United States pointed out that the Convention did not simply give labour rights but also other kinds of rights, such as family reunification. In the case of refugees, legislation in his country provided that cases for family reunification were decided upon on an individual basis. His delegation thus preferred to keep subparagraph (f) as it had emerged from the first reading.

115. The representative of India drew attention to the fact that countries that were not parties to the conventions on refugees and stateless persons would face particular problems if refugees and stateless persons were to be covered by the Convention. He thus preferred to keep subparagraph (f).

116. The representative of Morocco pointed out that States receiving refugees in Africa, where a serious refugee problem existed, would have serious difficulties, especially of an economic nature, if they accorded to such persons the rights provided for in the Convention. She therefore spoke in favour of retaining subparagraph (f).

117. At the 9th meeting, on 30 September, the Working Group had before it a proposal submitted by Australia relating to the exclusion of long-term and permanent residents, reading as follows:

"This Convention shall not apply to:

"A person who is recognized by the competent authority of a State in which he has taken residence as a person whose continued presence in that State:

"(a) Is not subject to any limitation of time imposed by law of the State, irrespective of whether he undertakes any lawful economic activity;

"(b) Would, in accordance with the relevant laws of the State, entitle him to apply for a grant of nationality of the State."

118. In introducing the proposal, the representative of Australia stated that Australia had proposed a clause excluding from the coverage of the Convention persons who were admitted to live permanently in a country and who became eligible for citizenship. He added that Australia did not do that because of any reservations regarding the rights granted under the Convention, since permanent residents of Australia enjoyed virtual equality with citizens and were eligible after only two years' residence to apply for citizenship. The proposal arose rather from the Australian Government's reluctance to have those people, who were constituent members of Australian society, and whom it saw as future citizens, regarded in the same way as guest-workers, who entered their country of employment without any guarantee of future residence.

119. After some discussion, the representative of Sweden read out the text which had emerged from the informal consultations and which was endorsed by India, Italy, Sweden and the United States, reading as follows:

"Notwithstanding the provisions of the present Convention, the status of refugees and stateless persons shall be governed by relevant national legislation and by international conventions."

120. The representative of Sweden, while explaining that the idea behind the new formulation was to avoid any conflict between the Convention on the protection of migrant workers and existing conventions for the protection of refugees and stateless persons, stated that if adopted, the subparagraph should become a separate article or included in part VII of the Convention.

121. The representative of Senegal pointed out that refugees were dealt with under the Convention relating to the status of refugees and the Protocol relating to the status of refugees. He added that the idea couched in the proposed formulation was meant to reflect that the Convention on migrant workers should not cover refugees already protected under national legislation or relevant international instruments. However, he considered that, from a technical point of view, the compromised proposal was still redundant. He explained that, since the exclusion of refugees was not systematic, the matter might be dealt with in part VII of the Convention.

122. The representative of Finland suggested revising the subparagraph and replacing it by the following: "Refugees are excluded in this Convention, unless they are given a status to exercise economic activity." The representative of the United States stated that it would be difficult for his delegation to accept such a formulation, which implied a double coverage of refugees.

123. After some discussion, the Chairman, supported by the representatives of Algeria and Sweden, suggested that the Working Group not deal with the reference to refugees in the article but defer its consideration and include it in part VII of the Convention. In support of that suggestion the representative of the Netherlands proposed including it in part VII as article 81 (b). In that connection, the representative of the United States stated that he would prefer having an agreement on the exclusion of refugees before transferring that clause to part VII of the Convention.

124. With regard to the subparagraph dealing with the exclusion of students or trainees, the representative of Sweden read to the Group the text which had emerged after some further informal consultations, as follows:

"Students and trainees, unless authorized by the State of employment to be engaged in a remunerated activity."

125. The representatives of the Federal Republic of Germany, France, Morocco, the Netherlands, Senegal and Yugoslavia, while recognizing the need to protect the human rights of students, expressed their difficulty in extending the application of a Convention on the protection of migrant workers to students.

126. The representative of Morocco, supported by the representative of the Federal Republic of Germany, drew the Group's attention to the risk of encouraging the effects of brain drain.

127. The representative of Greece insisted that, if a student had been granted a work permit and if he was not granted any protection, arrangements should be made to protect him from any eventual exploitation.

Article 3, introductory phrase

128. At the 10th meeting, on 1 October 1985, the Chairman announced that, as a result of informal consultations, the introductory phrase had been adopted as follows:

"This Convention shall not apply to:"

Article 3 (a) and (b)

129. At the same meeting, the Chairman stated that, after informal consultations between him and the delegation of the Soviet Union on the latter's proposal (see paras. 98-99 above), the following compromise text was put before the Working Group for its consideration:

"(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

"(b) Persons sent or employed by a State outside its territory, or by an employer on its behalf, for the execution of programmes with the receiving State, whose admission and status are regulated by specific agreement with this State".

130. With regard to subparagraph (a) of the compromise proposal, the representative of France suggested that the word "and" should be added after the words "official functions" and before the words "whose admission and status are regulated".

131. The representative of the United States requested clarification as to the difference between the terms "international organizations" and "international agencies". The Chairman pointed out that the definition of an "international organization" was given in article 2, paragraph (1) (i), of the Vienna Convention on the Law and Treaties and that the purpose of including the term "agencies" was to cover also international non-governmental organizations.

132. At the same meeting, the Working Group adopted subparagraph (a) of article 3 as read out by the Chairman at that meeting.

133. Referring to subparagraph (b) of the compromise proposal, the representative of Senegal, supported by the representative of Tunisia, requested clarification for the omission of the words "of co-operation for development agreed" after the word

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"programmes" which had appeared in the original text that had emerged from the first reading (A/C.3/39/WG.1/WP.1) and expressed their preference for retaining those words, which expressed a reality for many developing countries.

134. The Chairman said that the reasons for omitting those words were the difficulty of defining the term "programmes of co-operation for development" and the desire to expand the scope of the subparagraph beyond persons working for such programmes.

135. The representative of the Federal Republic of Germany suggested a compromise formula that would read "development programmes or other similar programmes".

136. The representative of Greece stated that in his delegation's opinion, the compromise text of subparagraph (b) was formulated too broadly. As a position of principle, he preferred the exclusion to be formulated restrictively. The compromise text in fact gave States the right, in bilateral agreements, to specify who was a migrant worker and who was not. In that connection, the Chairman drew attention to the fact that article 77, paragraph 2, in part VII of the Convention could perhaps be a reply to such concern.

137. The representative of Finland pointed out that the meaning of the word "programmes" was unclear and that it seemed to be close to the word "project" in paragraph 2 of article 2.

138. The representative of France requested clarification of the phrase "or by an employer on its behalf" after the words "its territory". Those words and the word "programmes" had been requested by the representative of the United States. In the light of the debate, the delegations of Finland and Senegal supported the compromise formula suggested by the Federal Republic of Germany.

139. Referring to the phrase "programmes with the receiving State", the representative of the Soviet Union stressed that that the central point in that context was that the status of workers employed for such programmes was regulated by the laws of the sending State. The aim of the proposal in paragraph (b) was not to determine the kind of work situations in which a person would or would not be considered a migrant worker, but their specific status according to which a person was not to be considered a migrant worker on the basis of the fact that the sending State bore the major responsibility as far as the conditions of his stay were concerned.

140. However, given the difficulty of defining the term "programmes", the representative of the Soviet Union suggested, at the 10th meeting, on 1 October, that the compromise text of subparagraph (b) read out by the Chairman be amended by adding the words "including programmes for development" after the words "for the execution of programmes with the receiving State" to satisfy the concern of the delegations of Senegal and Tunisia.

141. The representatives of Sweden, the Netherlands and Finland expressed their preference for the suggestion of the representative of the Federal Republic of Germany because they felt that the USSR suggestion would cover a broader category of persons.

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142. At the suggestion of the Chairman, it was agreed to hold further informal consultations on subparagraph (b).

Article 3 (f)

143. At the 10th meeting, on 1 October 1985, the Chairman announced that, during informal consultations, consensus had been reached on subparagraph (f) concerning refugees and stateless persons. The text as adopted by the Working Group reads as follows:

> (f) Refugees and stateless persons, unless such application is provided for in relevant national legislation of, or international instruments in force for, the State Party concerned.

Article 3 (g) concerning students and trainees

144. At the same meeting, the Chairman announced that, after informal consultations, the Working Group had decided to retain the wording of subparagraph (g) concerning students and trainees as it had emerged from the first reading. The text as adopted reads as follows:

> (g) Students and trainees;

145. The representative of Finland wished to have reflected in the report the following definition of the term "student" which had been suggested during consultations:

> "The term 'student' refers to a person who has been admitted to a State of which he is not a national to pursue a full-time course of studies. A student is a migrant worker when he engages in a remunerated activity that is not considered to be part of his course of study in that State."

146. Following the adoption of the subparagraph, the representatives of Colombia and Finland stated their understanding that, although having excluded that category from the scope of the Convention, the Working Group would discuss issues pertaining to students and trainees at a later stage of its work. The Chairman confirmed that that was the understanding of the Working Group.

147. While referring to his earlier reservations on self-employed workers, the representative of the Federal Republic of Germany stated that his delegation requested that a new subparagraph be added, in brackets, to article 3, as follows:

> "[Self-employed workers]"

148. The representative of the Federal Republic of Germany placed on record that the idea behind his request was that, since one delegation had requested subparagraph (h) of article 2 relating to self-employed workers be enclosed in brackets, that would result in having the Third Committee take a decision on subparagraph (h) either by accepting it (with or without restrictions) as a special category with restricted rights to be defined in part IV of the Convention, or by

simply rejecting subparagraph (h). In that case, because of the very broad definition of the term "migrant workers" in paragraph 1 of article 2, the category of "self-employed workers" would be fully considered as migrant workers. In order to avoid such a result, the delegation of the Federal Republic of Germany felt that it was necessary formally to propose that the Third Committee exclude the category of "self-employed workers" from the application of the Convention. In this connection, the representative of Finland referred to an earlier observation made by the representative of Sweden and recalled that if one looked back to the debate that had taken place on that subject, it would seem clear that since the self-employed workers had been included originally in the general definitions, and since the reference had been deleted, it would automatically mean that if there were no other reference to self-employed workers in the Convention, they would not be included in the general definition.

149. With reference to the proposal of the USSR on the text of subparagraph (b) of article 3, the representative of the Byelorussian SSR stated that there were two main elements to be taken into account. On the one hand, the persons concerned were sent by a State or by an institution on its behalf, and, on the other hand, their status was determined by special agreements. The exclusion thus proposed in subparagraph (b) was specific enough.

150. At its 12th meeting, on 2 October, the Working Group, after further informal consultations, adopted article 3 as follows:

Article 3

This Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outside its territory, who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the receiving State and who, in accordance with this agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in relevant national legislation of, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

[(f) Self-employed workers.]

Article 4

151. At its 13th meeting, on 2 October 1985, the Working Group considered a text for article 4 relating to the definition of the term "members of the family" on the basis of article 3 contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"Article 3

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

152. The representative of Sweden, supported by Denmark, suggested eliminating the first pair of brackets in the text and deleting the words "State of origin" in the third pair of brackets. In that connection, the representative of Finland, supported by Denmark, noted the necessity of spelling out the legislation which governed the status of the family. In his view, the applicable legislation should be that of the State of employment for the simple reason that the rights provided for in other parts of the Convention were based on the legislation of the State of employment. He recalled that, in his delegation's original proposal, the notion of family was restricted to that of a nuclear family and that the article that had emerged from the first reading contained the needed flexibility in that respect.

153. The representative of Australia stated that his delegation supported the concept of a nuclear family and that the law applicable with respect to a migrant worker in the State of employment is the law of that State. He also suggested that the word "dependent" be deleted from the fourth bracket.

154. The representative of the Federal Republic of Germany suggested that, in the case of social security, health insurance or other similar social matters, reference should be made only to the traditional customs. He proposed adding the words "as equivalent to marriage", after the word "recognized".

155. The representative of Morocco, supported by the delegations of Algeria and Tunisia, stressed that the concept of "family" in other societies, such as the Islamic society, should be fully taken into account. Further, she said that the laws governing the personal status of the Moslem migrant workers should not be neglected. While citing Morocco as an example, she added that if such a case should arise, the national law governing the personal status of foreigners would be the one that would be taken into account. Moreover, she said that it was not acceptable to her delegation to restrict the concepts contained in the article. She therefore proposed deleting the words "minor, unmarried".

156. While supporting the delegations of Morocco and Tunisia, the representative of Algeria stated that the differences arising out of diverse legal systems, cultures and civilizations should not affect the definition of the concept of a family by establishing discriminatory criteria.

157. With reference to international private laws, the representative of Tunisia pointed out that in such matters in various countries, the law of the country of the foreign worker might prevail.

158. Regarding the French version of the article, the representative of France stated that the words "ou la conjointe" should be deleted, as the French word "conjoint" was neutral.

159. The representative of Yugoslavia, while objecting to the words "minor, unmarried", proposed retaining "dependent children and parents" instead.

160. The representative of the United States, supported by Norway, stated that care should be taken not to put the migrant worker in a more privileged status than nationals of the State of employment.

161. The representative of Colombia stated that if the brackets around the words "[of the State of employment]" were deleted, it could affect the legitimacy of marriage.

162. In the course of the session, the Chairman drew the attention of the Working Group to the commendable work that had been done by OAU and ECA in assisting in co-ordinating the views of the African Group and said that copies of the official joint letters of those two organizations could be obtained by delegations that had not received them yet from the respective secretariats.

163. The Working Group adopted the present report at its 15th meeting, on 4 October 1985.

II. TEXT OF THE ARTICLES ADOPTED BY THE WORKING GROUP DURING THE FORTIETH SESSION OF THE GENERAL ASSEMBLY

Article 1

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

Article 2

For the purpose of this Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2(a) The term "frontier worker" refers to a migrant worker who retains his habitual residence in a neighbouring State to which he normally returns every day and at least once a week;

(b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;

(c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he is not a national;

(d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation which is under the jurisdiction of a State of which he is not a national;

(e) The term "itinerant worker" refers to a migrant worker who, having his habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his occupation;

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his employer or enterprise;

(g) The term "specified employment worker" refers to a migrant worker:

(i) Who has been sent by his employer for a restricted and defined period of time to a State of which he is not a national to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work which requires professional, commercial, technical or other highly specialized skill; or

(iii) Who, upon the request of his employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief;

and who is required to depart from the State of employment either at the expiration of his authorized period of stay, or earlier if he no longer undertakes that specific assignment or duty or engages in that work;

(h) [The term "self-employed worker" refers to a person who engages in a remunerated activity otherwise than under a contract of employment and who shall be considered a migrant worker when he earns his living through this activity in a State of which he is not a national [normally working alone or together with members of his family.]]

Article 3

This Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions;

(b) Persons sent or employed by a State or on its behalf outsiide its territory, who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the receiving State and who, in accordance with this agreement, are not considered migrant workers;

(c) Persons taking up residence in a State different from their State of origin as investors;

(d) Refugees and stateless persons, unless such application is provided for in relevant national legislation ot, or international instruments in force for, the State Party concerned;

(e) Students and trainees;

[(f) Self-employed workers.]
