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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. Juhani LÖNNROTH (Finland)

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. The Working Group has since 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; (k) a sixth session during the fortieth session of the Assembly from 23 September to 4 October 1985; (l) a seventh session during the forty-first session of the Assembly from 24 September to 3 October 1986; and (m) a sixth inter-sessional meeting from 1 to 12 June 1987.

3. Having examined the progress made by the Working Group during the forty-first session of the General Assembly and concerned at the fact that, owing to the current financial situation, the Working Group could not meet between sessions of the Assembly in 1986, immediately after the first regular session of the Economic and Social Council, following the practice established for the Group by the Assembly itself, the General Assembly in its resolution 41/151 of 4 December 1986 took note of the recommendations of the Working Group to the effect that its inter-sessional meeting should not be suspended again so as to enable it to complete, as soon as possible, the second reading of the remaining articles of the draft convention.

4. By the same resolution, the General Assembly, inter alia, took note with satisfaction of the report of the Working Group (A/C.3/41/3) and, in particular, of the progress made by the Working Group, 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 1987 of the Economic and Social Council. The Assembly, in paragraph 3 of the resolution, invited the Secretary-General to transmit to Governments the report of the Working Group so as to enable the members of the Group to continue the drafting, in second reading, of the draft convention during the inter-sessional meeting to be held in the spring of 1987, as well as to transmit the results obtained at that meeting to the Assembly for consideration during its forty-second session. In paragraph 4 of the resolution, the Assembly also invited the Secretary-General to transmit that document to the competent organs of the United Nations and to the 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 forty-second session of the Assembly, preferably at the beginning of the session, to continue the second reading of the draft international convention. The Assembly requested the Secretary-General to do everything possible to ensure adequate secretariat services for the Working Group for the timely performance of its mandate, both at its inter-sessional meeting, after the first regular session of 1987 of the Economic and Social Council, and during the forty-second regular session of the Assembly.

5. Thus, in accordance with paragraphs 3 and 4 of General Assembly resolution 41/151 and prior to the forty-second session of the Assembly, the Secretary-General transmitted the report of the Working Group on its work during the forty-first session of the General Assembly (A/C.3/41/3) to Governments, competent organizations of the United Nations system and international organizations concerned.

6. In pursuance of General Assembly resolution 41/151, the Working Group met at United Nations Headquarters from 1 to 12 June 1987 under the chairmanship of Mr. Antonio González de León and the vice-chairmanship of Mr. Juhani Lönnroth. It held 18 meetings with the participation of delegations from all regions. An observer for the International Labour Organisation (ILO) also attended the meetings.

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

(a) Report of the open-ended Working Group during the forty-first session of the General Assembly (A/C.3/41/3);

(b) 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);

(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 adopted on second reading by the Working Group (A/C.3/42/WG.1/WP.1);

(d) Revised proposals for paragraphs (2), (3), (5), (6), (7) and (8) of article 17, submitted by Finland, France, Greece, Italy, Netherlands, Norway and Yugoslavia (A/C.3/42/WG.1/CRP.1).

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

(a) Previous reports of the Working Group: (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; A/C.3/39/1; A/C.3/39/4 and Corr.1 (English only); A/C.3/40/1; and A/C.3/40/6);

(b) 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);

(c) 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);

(d) 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);

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

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

(g) 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);

(h) 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);

(i) 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);

(j) 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);

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

(l) 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

9. 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.

PART III

Fundamental human rights of all migrant workers
and members of their families

Article 17

10. At its fall meeting of 1986, the Working Group had adopted, at second reading, paragraph 1 of article 17 as follows:

(1) Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

11. The Working Group continued its second reading of article 17 at its 1st, 2nd, 5th, 7th, 15th and 16th meetings held on 1, 3, 4 and 10 June. The texts of paragraphs 2 to 8, as they appeared after the first reading (A/C.3/41/3), read as follows:

"(2) If they are detained in custody while awaiting trial, they shall, [whenever possible,] [save in exceptional circumstances,] be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

"[(3) Any migrant worker or a member of his/her family who is detailed in a State of transit or in a receiving State [pending trial on a charge of] [for] violation of provisions relating to migration, shall be housed, in so far as practicable, separately from persons in detention pending trial for other offences.]

"[(3) Any migrant worker or member of his family who is detained in the State of destination for infraction of the provisions concerning migration shall be housed in suitable accommodation [under judicial control] separate from the prisons or other centres of detention or imprisonment for offenders or criminals.]

"(4) During any period of imprisonment in pursuance of a sentence imposed by a court of law, the treatment of a migrant worker or a member of his family shall be aimed at his reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

"[(5) During detention or imprisonment, migrant workers or members of their families shall enjoy the right to visits by members of their family.]

"[(6) In any case of application of sanctions, including pending proceedings for the expulsion or deportation of migrant workers or their families, the competent authorities of the State of destination shall pay special attention to the problems posed by the families of such workers, with particular reference to the specific needs of women and minor children.]

"[(7) The fundamental human rights and the labour rights of migrant workers or their families shall not, in the event of their being subjected to any form of detention or imprisonment provided for by the laws in force in the State of destination, be limited or impaired merely because such workers or their families lack the required migration documentation. This provision shall apply at all times, including during any expulsion or deportation proceedings.]

"[(8) All costs arising from the detention of migrant workers or their families shall be borne by the competent authorities of the State of destination.]"

12. At the first meeting on 1 June, the delegations of Finland, France, Greece, Italy, the Netherlands, Norway and Yugoslavia submitted revised proposals for paragraphs (2), (3), (5), (6), (7) and (8) of article 17 as follows:

"...

"1. Replace paragraphs (2) and (3) by the following text

If they are deprived of their liberty for reasons other than a conviction on criminal charges they shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons or as persons not accused on criminal charges.

/...

"2. Replace paragraph (5) by the following text

During detention or imprisonment, migrant workers or members of their families shall be accorded the same rights as nationals to visits by members of their family.

"3. Replace paragraph (6) by the following text

Whenever a migrant worker is deprived of his liberty, the competent authorities of the State concerned shall pay special attention to the problems posed for members of his family.

"4. Delete paragraph (7)

"5. Replace paragraph (8) by the following text

All costs arising from the detention or the imprisonment of migrant workers or members of their families shall be borne by the State taking such measures."

13. The Working Group first proceeded with a general exchange of views on the above-mentioned proposals.

14. Regarding the expression "save in exceptional circumstances", the representative of the Federal Republic of Germany expressed his preference for replacing it by the expression "whenever possible", pointing out that the requirement of segregating detained migrant workers for non-criminal charges from convicted persons might be impractical and unrealistic in a number of cases. The representative of Morocco said that, in her view, such cases were already covered.

15. The Chairman said that paragraph 2 might be modified to make clear that it dealt with persons detained for reasons connected to their migrant status. The representative of the United States stated that, in his view, the paragraph should be limited to detention of migrant workers for being in an irregular situation.

16. Turning to paragraph 4 of article 17 as it had emerged from the first reading, several delegations expressed agreement with the paragraph as it stood. The representative of Sweden, recalling his country's reservation to the International Covenant on Civil and Political Rights regarding separation of juvenile and adult offenders, expressed his preference for further consultations on the paragraph.

17. In connection with paragraph 5 of the revised proposals, the representative of the Union of Soviet Socialist Republics said that, in his understanding of the text, members of migrant workers' families would have the right to visit detained or imprisoned migrant workers when they were in the same State. He suggested therefore that the words "in keeping with national legislation" be added to this paragraph.

18. Commenting on paragraph 7 as it had emerged from the first reading and which was suggested for deletion in the revised proposals of the seven delegations, the representative of the United States, seconded by the representative of the Federal Republic of Germany, said that in fact that paragraph, if appropriately amended, could replace the whole of article 17.

19. Turning to paragraph 8 of the revised proposals concerning the costs of detention, delegations made a distinction between that paragraph and paragraph 7 of article 22 (A/C.3/39/WG.1/WP.1) dealing with the costs of expulsion. Paragraph 7 of article 22 as it emerged from the first reading reads as follows:

"[(7) In any case of expulsion or deportation, the authorities of the State of employment [shall bear the costs incurred and] [shall refrain from exerting pressure on the persons concerned in any manner in order to obtain their agreement to summary procedures such as "voluntary exit", when such agreement is not spontaneously forthcoming from the persons concerned.]]"

20. Many delegations expressed the view that the costs of the detention or imprisonment as understood in article 17 should not be borne by the migrant worker or his or her family. With regard to the costs of expulsion on the other hand, the representatives of Australia and the Federal Republic of Germany pointed out that, according to their national legislation, costs were borne by the migrant worker concerned.

21. At the 5th meeting on 3 June, the Chairman announced that as a result of informal consultations the following suggestions were made:

"Paragraph (2) should read as follows

If they are detained for reasons related to the enforcement of provisions on migration they shall, save in exceptional circumstances, be held separately from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

"Delete old paragraph (4)

"Replace old paragraph (5) by the following text

During detention or imprisonment, migrant workers or members of their families shall be accorded the same rights as nationals to visits by members of their family.

"Replace old paragraph (6) by the following text

Whenever a migrant worker is deprived of his liberty, the competent authorities of the State concerned shall pay special attention to the problems that may be posed for members of his family, in particular for spouses and minor children.

"Old paragraph 7 (pending)

"Old paragraph 8 should read as follows

If a migrant worker or a member of his family is detained for the purpose of verifying any infraction of provisions related to migration, he shall not bear any costs derived therefrom."

22. During the discussion, reference was made by some delegations to the distinction between "detention" and "imprisonment" made by the Working Group of the Sixth Committee on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/C.6/41/L.19). The representative of France said that the word "prévenus" would be more appropriate in paragraph 2.

23. Several delegations commented on the suggested deletion of paragraph 4 as it had emerged from first reading. The representatives of Algeria, Tunisia, Morocco and Ghana stated that paragraph 4, inspired from article 10 of the International Covenant on Civil and Political Rights, contained valuable ideas on the social rehabilitation of prisoners and the separation of juvenile from adult offenders which should be included in the draft Convention. It was stressed that the draft Convention should not drop international standards below those of the Covenant already accepted by the international community.

24. Referring to the informal consultations which had led to the suggestion for deletion of paragraph 4, the Chairman stated that, even if that paragraph was deleted, article 10 of the International Covenant on Civil and Political Rights would obviously still apply. The question was one of the usefulness of paragraph 4; for instance, when whole families might be detained for migration reasons, would it be desirable to separate juveniles from the rest of their family. Such considerations had led to the above-mentioned suggestion for deletion. The representative of Italy said that, if it was felt as necessary, a provision could be added on the rehabilitation of prisoners. In his view, however, there was no need to reproduce the Covenant, since reference to it was made in the preamble of the draft Convention.

25. The Chairman then read out a text for paragraph 3 of article 17 suggested as a result of informal consultations as follows:

"3. If a migrant worker or a member of his family is imprisoned following a criminal sentence due solely to a violation of provisions related to migration, he shall not, save in exceptional circumstances, be held together with persons convicted for other criminal offences."

26. Commenting on that text, the representatives of France and the Federal Republic of Germany expressed their reservation to the idea of separating imprisoned migrant workers from other prisoners. The Chairman pointed out that most penitentiary systems provided for separation of types of offenders, such as for example those who committed violent crimes. The representative of Italy expressed his support for the suggested paragraph 3. The representative of the Soviet Union noted that proposed texts went sometimes too far into matters of criminal law and procedure on which States were extremely sensitive.

27. At its 7th meeting on 4 June the Working Group resumed consideration of the remaining paragraphs of article 17. The Working Group thus took up paragraph 2 of article 17, on the basis of paragraph 2 of article 17 as contained in document A/C.3/39/WG.1/WP.1. The Working Group had before it a text for article 17, paragraph 2 which had emerged from the informal consultations. The new proposal for paragraph 2 read as follows:

"2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile migrant workers and members of their families shall be separated from adults and brought as speedily as possible for adjudication."

28. The Working Group decided to adopt the new proposal for paragraph 2 as it stood.

29. The representative of Norway expressed his objections to the second sentence where reference was made to "accused juvenile migrant workers". He, therefore, decided to place on record his reservation in the light of his country's corresponding reservation to article 10 of the International Covenant on Civil and Political Rights.

30. Turning to paragraphs 4, 5, 6 and 8 of article 17, following the results of the informal consultations, the Working Group adopted paragraphs 4, 5, 6 and 8 as follows:

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the treatment of a migrant worker or a member of his family shall be aimed at his reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers or members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his family, in particular for spouses and minor children.

8. If a migrant worker or a member of his family is detained for the purpose of verifying any infraction of provisions related to migration, he shall not bear any costs arising therefrom.

31. With reference to paragraphs 2 and 4, the representative of Finland stated that, even if it was normal practice in Finland to separate detained or imprisoned juvenile persons from adults, it was not practicable, nor in the interest of the unity of the families of migrant workers, to establish such a separation as an unconditional obligation.

32. The representative of Norway also voiced his reservation as regards paragraph 4, in the light of his country's corresponding reservation to article 10 of the International Covenant on Civil and Political Rights.

33. The representative of Sweden also expressed his objections to the second sentence of paragraph 4, where reference was made to "juvenile offenders". He, therefore, decided to place on record his reservation.

34. The Working Group took up consideration of paragraph 3 of article 17 on the basis of paragraph 3 in the left hand column of article 17 contained in document A/C.3/39/WG.1/WP.1. As a result of the informal consultations, the Working Group agreed to delete the word "/her", and then the phrase "[pending trial on a charge of]", and the words "for other offences". The Working Group also decided to replace the words "receiving State" by the words "State of employment". After a brief discussion, the Working Group decided to adopt article 17, paragraph 3 as follows:

3. Any migrant worker or member of his family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration, shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

35. The representative of the Federal Republic of Germany expressed his objections to paragraph 3 of article 17 as adopted. He stated that he would have preferred its deletion but, as there was a wide consensus to retain the paragraph, he had decided to place on record his objections to the inclusion of such provisions in the Convention.

36. At the 15th meeting on 10 June the Working Group considered paragraph 7 of article 17, consideration of which had been suspended pending adoption of article 22.

37. During the discussion some delegations were in favour of the retention of paragraph 7 and others in favour of its deletion. Several delegations opposed the inclusion of a reference to "labour rights" in paragraph 7 in addition to "fundamental human rights".

38. The representative of the Federal Republic of Germany stated that, if paragraph 7 remained, he proposed to amend it by inserting, after the words "limited or impaired" the words "beyond the extent necessary for the purposes of detention" and deleting the rest of the paragraph.

39. The representative of Algeria stated that she could not accept the amendment proposed by the delegation of the Federal Republic of Germany, since the words "beyond the extent necessary for the purposes of detention" could have consequences directly affecting the dignity and safety of the migrant worker. In her opinion, that insertion might imply that certain kinds of treatment or abuse which might affect the physical integrity of migrant workers detained on any charge would thus be legitimized and covered by such a clause.

40. It was pointed out that the substance of paragraph 7 was to guarantee certain fundamental human rights to all migrant workers, whether they were in a regular or in an irregular status, without any discrimination. The representative of Morocco proposed inserting a phrase stating that all migrant workers would enjoy, on the same footing as nationals, fundamental human rights and acquired labour rights. Some delegations expressed their reservation on the inclusion of labour rights in paragraph 7 while otherwise agreeing with the Moroccan proposal.

41. The representative of Morocco stated that, in a spirit of co-operation, her delegation would not insist on the inclusion of a reference to labour rights in paragraph 7 of article 17, because she understood that article 25 covered such concerns.

42. In light of the discussion, the Working Group decided to have informal consultations on paragraph 7 of article 17.

43. At its 16th meeting on 10 June the Working Group had before it a text which had been agreed upon in informal consultations and which was introduced by the Chairman. The Working Group adopted it on second reading as paragraph 7 of article 17 as follows:

7. All migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

44. The text of article 17 as adopted by the Working Group read as follows:

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile migrant workers and members of their families shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or a member of his family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration, shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the treatment of a migrant worker or a member of his family shall be aimed at his reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers or members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his family, in particular for spouses and minor children.

7. All migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his family is detained for the purpose of verifying any infraction of provisions related to migration, he shall not bear any costs arising therefrom.

Article 18

45. The Working Group considered a text for article 18 at its 2nd meeting on 1 June on the basis of article 18 contained in document A/C.3/39/WG.1/ WP.1 reading as follows:

"[(1) Migrant workers and members of their families shall have the right to equality with citizens of the State concerned as regards access to and treatment by the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.]

"(2) Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

"(3) In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

"(a) To be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;

"(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

"(c) To be tried without undue delay;

"(d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it;

"(e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

"(f) To have the free assistance of a [qualified] interpreter if they cannot understand or speak the language used in the proceedings;

"(g) Not to be compelled to testify against themselves or to confess guilt.

"(4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

"(5) Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

"(6) When migrant workers or members of their families have by a final decision been convicted of a criminal offence and when subsequently their conviction has been reversed or they have been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the persons who have suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to them.

"(7) Migrant workers and members of their families shall not be liable to be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each State."

46. At the same meeting the Working Group had before it a revised proposal for article 18 submitted by the Mediterranean and Scandinavian (MESCA) group of countries and other interested delegations and which was introduced by the representative of Finland. The revised proposal read as follows:

"(1) Migrant workers and members of their families shall have the right to equality with the citizens of the State concerned as regards access to treatment by the courts and tribunals.

"(2) Migrant workers shall be accorded the same right as citizens of the State concerned to legal assistance provided for by that State.

"(3) In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

47. At its 2nd meeting on 1 June, the Working Group adopted paragraphs 1 and 2 of article 18 as follows:

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

48. With respect to paragraph 1 of article 18, the representative of the Federal Republic of Germany requested that the first sentence should be preceded by the phrase "subject to the national legislation of the State of employment ..." in order to reflect the fact that under the national legislation of the Federal Republic of Germany a foreign national instituting proceedings before a civil court or a labour tribunal might be required to post a deposit, whereas nationals of the Federal Republic of Germany had no such obligation. Since the proposal did not meet with a favourable response in the Working Group, the representative of the Federal Republic of Germany said that for the sake of consensus his delegation, while maintaining its position, would be content to have it reflected in the report.

49. Turning to subparagraph (f), the representative of the United States recalled his earlier proposal for adding the words "free of charge if necessary". He pointed out that such an approach had been taken by the Working Group of the Sixth Committee on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

50. The representative of Australia said that he could go along with the proposal of the United States provided it was understood as not affecting any rights to an interpreter and pointed out that he did not see it as in any way affecting the right to an interpreter.

51. The representatives of the Netherlands, the Federal Republic of Germany, Finland, Senegal, Sweden and Yugoslavia expressed their strong reservations about the proposal of the United States. It was pointed out that there should be no discrimination between nationals and non-nationals, including migrant workers, on the right to free interpretation as proclaimed in the International Covenant on Civil and Political Rights (art. 14, para. 3 (f)). The question was also which authority would decide whether free interpretation was necessary, and the opinion was expressed that it would be difficult to assess who needed free interpretation and who did not. Moreover, delegations stated, the deliberations of the Sixth Committee on the issue of interpretation had not been finalized and there were still reservations on that point.

52. The representative of Italy proposed that the word "adequately" be added in the second part of subparagraph (f) so that it would read "... if they cannot adequately understand or speak the language used in the proceedings". He also pointed out that free interpretation would be necessary in most cases, given the current cost of interpretation and the migrant's income. Therefore, whether the words "if necessary" were added or not, the end result would be the same.

53. The delegation of China placed on record its reservation on the question of the payment for services of an interpreter.

54. At the same meeting the Working Group adopted paragraphs 3 (a) (b) (c) (d) (e) and (g). The Working Group also adopted paragraphs 4, 5, 6 and 7 and decided to postpone consideration of paragraph 3 (f) to a later stage.

55. Regarding paragraphs 5 and 7 of article 18, the representative of Norway placed on record the reservations of his delegation as his delegation had made reservation as regards similar provisions embodied in article 14, paragraphs 5 and 7 of the International Covenant on Civil and Political Rights.

56. At its 7th meeting on 4 June, the Working Group resumed consideration of paragraph 3 of the article.

57. During the discussion the representative of Finland suggested that the wording of the paragraph should be formulated along the same lines as article 14, paragraph 3 (f) of the Covenant as follows: "To have the free assistance of an interpreter if he cannot understand or speak the language used in court".

58. The representative of Italy, with a view to improving the text, suggested adding the word "adequately" after the words "... if they cannot understand". Against that suggestion it was said that it might be too subjective and pose some problems in determining the meaning of "adequately". The representatives of the Netherlands, Sweden and Ghana insisted on having the wording as used in the Covenant. After some discussion, the representative of the United States stated that, in a spirit of compromise, he would not hinder the consensus reached on that paragraph and that he would put his reservations on record.

59. The Working Group then adopted article 18 paragraph 3 (f) as follows:

Article 18

3. ...

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

60. The representative of Sweden wanted to place on record, as regards paragraph 7, that his country had made a reservation to the corresponding paragraph in the International Covenant on Civil and Political Rights (art. 14, para. 7).

61. The text of article 18 as adopted on second reading reads as follows:

Article 18

1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit at law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(a) To be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay for it;

(e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(g) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

6. When migrant workers or members of their families have by a final decision been convicted of a criminal offence and when subsequently their conviction has been reversed or they have been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the persons who have suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to them.

7. Migrant workers and members of their families shall not be liable to be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each State.

Article 19

62. The Working Group considered a text for article 19 at its 2nd and 3rd meetings on 1 and 2 June, on the basis of the following text of article 19 as it emerged from the first reading in document A/C.3/39/WG.1/WP.1:

"(1) Migrant workers and members of their families shall not be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when the criminal offence was committed [nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed]. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, they shall benefit thereby.

"[(2) In accordance with the principle of proportionality of penal sanctions, courts shall have regard, in imposing any sentence for criminal offences committed by migrant workers or members of their families, to any incidental sanctions or consequences affecting their right of residence or work, including expulsion.]

"(3) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to [the general principle of law recognized by the community of nations] [the legislation of the receiving State]."

63. At its 2nd meeting on 1 June, the Working Group decided to delete the square brackets and then adopted paragraph 1 of article 19 which reads as follows:

1. Migrant workers and members of their families shall not be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If subsequent to the commission of the offence provision is made by law for the imposition of a lighter penalty, they shall benefit thereby.

64. At the same meeting, the Working Group had before it a proposal for article 19, paragraph 2, submitted by the MESCA group and introduced by Finland. The text of the proposal reads as follows:

"2. In imposing a sentence for a criminal offence committed by a migrant worker or a member of his family regard should be had to any incidental consequences affecting his right of residence or work."

65. At its 3rd meeting on 2 June, the Working Group decided to take up consideration of paragraph 3 of the article. During the consideration of this paragraph it was recalled that paragraph 3 as it stood was taken from article 15, paragraph 2 of the International Covenant on Civil and Political Rights. Many delegations pointed out that article 15, paragraph 2 of the Covenant had been drafted to cover exceptional circumstances or international crimes such as genocide and that it was not relevant to retain its provisions in the present Convention dealing specifically with migration. Therefore, the Working Group decided to delete paragraph 3.

66. The Working Group then turned to paragraph 2 of article 19. As regards the proposal submitted by the MESCA group for that paragraph, the representative of the United States suggested replacing it by a new text, to read as follows:

"2. Humanitarian considerations related to his status may be taken into account in imposing a sentence for a criminal offence committed by a migrant worker or a member of his family."

67. The representative of Finland stated that his delegation had difficulty with the phrase "may be taken into account", as in his view that term expressed an idea of probability. He suggested either the complete deletion of paragraph 2 or the replacement of the word "may" by the word "should".

68. The representative of the Federal Republic of Germany supported that point of view and suggested the addition of the words "... in so much as the legislation of the State concerned provides this" after the word "should" as proposed by the representative of Finland.

69. The representative of the Netherlands stated that he would prefer the wording proposed by the United States but, nevertheless, he would be willing to go along with the proposal of the delegation of the Federal Republic of Germany.

70. The representative of Italy stated that, in the opinion of his delegation, the words "should be taken into account" did not oblige a State to take such a situation into consideration, but rather invited it to do so.

71. The representative of the Soviet Union stated that his delegation could go along with the proposal made by the representative of the United States. He believed that while humane considerations should be given to migrant workers, the Convention should contain precise norms relating to specific questions.

72. The representative of Algeria, in reference to the words "humanitarian considerations related to his status" stated that, in her delegation's opinion, the expression was too vague and that she would prefer the original wording of the MESCA group.

73. In an effort to reach a consensus the Chairman proposed the following text:

"2. Humanitarian aspects related to his status, in particular with respect to his right of residence or work, should be considered in imposing a sentence for a criminal offence committed by a migrant worker or a member of his family."

74. After some discussion, the Working Group adopted a text for article 19, paragraph 2, reading as follows:

2. Humanitarian considerations related to his status, in particular with respect to his right of residence or work, should be considered in imposing a sentence for a criminal offence committed by a migrant worker or a member of his family.

75. Article 19 as adopted by the Working Group on second reading was formulated as follows:

Article 19

1. Migrant workers and members of their families shall not be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, they shall benefit thereby.

2. Humanitarian considerations related to his status, in particular with respect to his right of residence or work, should be considered in imposing a sentence for a criminal offence committed by a migrant worker or a member of his family.

Article 20

76. At its 3rd meeting on 2 June, the Working Group considered a text for article 20 on the basis of the text of article 20 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"Migrant workers and members of their families shall not be imprisoned, deprived of their authorization of residence or work permit or expelled merely on the ground of [inability] [failure] to meet a contractual obligation."

77. At its 2nd meeting, on 1 June, the Working Group had before it a revised text for article 20 submitted by the MESCA group and introduced by the representative of Finland. The revised text read as follows:

"1. Migrant workers and members of their families shall not be imprisoned merely on the ground of inability to fulfil a contractual obligation.

"2. They shall not be deprived of their authorization of residence or work permit or expelled merely on the ground of inability to meet an obligation arising out of a work contract unless that obligation constitutes a condition required for such authorization or permit."

78. The representative of the United States said that the article, as agreed on first reading, posed some difficulty for his delegation, because in his country some migrant workers were admitted to perform certain functions on the basis of a contract and if they failed to do so they would have to leave the country.

79. In that connection, the representative of Finland explained that, while the first part of the MESCA proposal was derived directly from the International Covenant on Civil and Political Rights, the second part contained new elements and that was why the co-sponsors thought of dividing article 20 into two paragraphs. The representatives of Greece, Tunisia and Australia expressed their support for the proposal of the MESCA group.

80. The representative of the Federal Republic of Germany said that the MESCA proposal was acceptable to his delegation.

81. The representative of the United States said that the revised text of article 20 as proposed by the MESCA group met the concerns of his delegation, but suggested minor changes replacing the words "inability to meet" by the words "failure to fulfil" and adding the words "fulfilment of" in the penultimate paragraph after the word "unless" and before the word "that". He also suggested deleting the word "required" in the last sentence.

82. At the same meeting the Working Group adopted article 20 on second reading as follows:

Article 20

1. Migrant workers and members of their families shall not be imprisoned merely on the ground of failure to fulfil a contractual obligation.

2. They shall not be deprived of their authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

Article 21

83. At its 3rd meeting, on 2 June, the Working Group considered the text of article 21 as contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. [It shall be a [serious] offence, and punishable accordingly, unlawfully to confiscate such documents or to destroy or attempt to destroy them.]"

84. At the same meeting the Working Group had before it a revised text for article 21 submitted by the MESCA group reading as follows:

"It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his family."

85. It was the understanding of the Group that the last phrase of the revised text (para. 84 above) implied that in no case could a genuine identity document be destroyed by public officials.

86. The Working Group decided to adopt the text of article 21 as it had emerged from the informal consultations.

87. After the adoption of article 21, the representative of Tunisia stated that the interpretation "a contrario" of that article was not acceptable to his delegation.

88. The text of article 21, as adopted on second reading, reads as follows:

Article 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his family.

Article 22

89. The Working Group considered a text for article 22 at its 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th and 16th meetings on 1, 2, 3, 4, 5 and 11 June, on the basis of article 22 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"[(1) Migrant workers and members of their families shall not be subject to measures of [collective] [mass] expulsion.]

"[(1) Each case of expulsion shall be examined and decided individually.]

"[(2) Migrant workers and members of their families may be expelled from the territory of a State Party to this Convention only in pursuance of a judicial or administrative decision reached or dictated in accordance with law and stating the reasons for the decision.]

"[(3) The decision shall be communicated to them in writing.]

"[(4) Except where the decision is pronounced by a judicial authority the person concerned shall have the right to appeal [to press its examination by a higher authority] against it. If the [appeal] [review] is to be examined by a judicial authority, the execution of the decision shall be stayed except where the reasons stated therefore involve substantial requirements of national security or public order. If a decision which has been the subject of such immediate execution is subsequently annulled, the person concerned shall have the right to compensation according to law.]

"[(5) In case of expulsion, the person concerned shall be allowed a reasonable opportunity to obtain the settlement of any claims for wages and other entitlements due to him by his employer, to settle any contractual liabilities, [and where this appears necessary for reasons of personal security, to seek entry to a State other than his State of origin.] Account shall also be taken of the person's family circumstances.]

"[(6) Expulsion or departure from the receiving State shall not in itself prejudice any rights acquired under the law of a migrant worker or a member of his/her family.]

"[(7) In any case of expulsion or deportation, the authorities of the State of employment [shall bear the costs incurred and] [shall refrain from exerting pressure on the persons concerned in any manner in order to obtain their agreement to summary procedures such as "voluntary exit", when such agreement is not spontaneously forthcoming from the persons concerned.]]"

90. At its second meeting on 1 June, the Working Group had before it a proposal submitted by the MESCA group and other interested delegations for article 22 reading as follows:

"1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

"2. Migrant workers and members of their families may be expelled from the territory of a State Party to this Convention only in pursuance of a judicial or administrative decision taken in accordance with law and stating the reasons for the decision.

"3. The decision shall be communicated to them in writing. They shall be informed of the decision in a language they can understand.

"4. Except where the decision is pronounced by a judicial authority the person concerned shall have the right to appeal against it. If the appeal is to be examined by a judicial authority, the execution of the decision shall be stayed except where the reasons stated therefore involve substantial requirements of national security or public order. If a decision which has been the subject of such immediate execution is subsequently annulled, the person concerned shall have the right to compensation according to law.

"5. In case of expulsion, the person concerned shall be allowed a reasonable opportunity to obtain the settlement of any claims for wages and other entitlements due to him by his employer, to settle any contractual liabilities and, where this appears necessary for reasons of personal security, to seek entry to a State other than his State of origin. Account shall also be taken of the person's family.

"6. Expulsion departure from the receiving State shall not in itself prejudice any rights of a migrant worker or a member of his family acquired under the law.

"7. In any case of expulsion of a migrant worker or a member of his family, the costs of expulsion shall not be borne by them."

91. The Working Group first held a general discussion on the texts for paragraph 1 of article 22.

92. Referring to the article as proposed by the MESCA group, the representative of the Federal Republic of Germany stated that he could not agree to the first sentence and preferred to retain only the second sentence.

93. The representative of Australia stated that his delegation supported the text as proposed by the MESCA group.

94. The representative of the Netherlands supported the arguments of the representative of the Federal Republic of Germany and suggested adding the words "that is" after the word "expulsion" in the first sentence and combining the two sentences of paragraph 1.

95. The representative of Greece referred to article 4 of the European Convention which prohibited collective expulsions and expressed concern that if the first sentence of the paragraph under discussion was eliminated it could be in conflict with that Convention.

96. The representative of the Federal Republic of Germany suggested the addition of the words "which means that" after the word "expulsion" in the MESCA text in order that the meaning of collective expulsion would be clear. The representative of Greece stated that there was no need to explain what collective expulsion was and suggested that the wording used in the European Convention stating that the "expulsion of migrant workers is prohibited" could be used.

97. The representative of Morocco stated that she had no problem in supporting the MESCA text of paragraph 1 as it stood, but that she could accept the merging of the second sentence with the first.

98. The representative of the Netherlands stated that he saw no harm in clarifying the concept of collective expulsion and supported the merging of the two sentences.

99. The representative of the Federal Republic of Germany said that he was prepared to accept one of two formulas for that paragraph, either to retain the proposal of the representative of the Netherlands to add the words "that is" or to include his observations in the Working Group's report.

100. After some discussion, at the 3rd meeting on 2 June, the Working Group adopted article 22, paragraph 1, as follows:

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

101. The representative of the Federal Republic of Germany stated that his delegation could not agree to the first sentence "Migrant workers ... measures of collective expulsion" unless the second sentence "Each case of ... individually" were linked to it, as suggested by the Netherlands delegation, by an explanatory connective. Otherwise, the blanket prohibition of measures of collective expulsion might well be interpreted in such a way as to prohibit the authorities of the State of employment from simultaneously expelling a group of migrant workers who were nationals of a single State. As the proposal of the delegation of the Netherlands had not been retained, the representative of the Federal Republic of Germany called for the deletion of the first sentence, while stating that, since the Working Group was not willing to accept that suggestion, his delegation, for the sake of consensus, was prepared to agree to having its position placed on record in the report.

102. The Working Group then took up consideration of article 22, paragraph 2. The representative of Portugal expressed his support for the text presented by MESCA. The representative of Australia expressed the concern of his delegation in accepting that proposal as formulated. He thus proposed ending the last sentence after the word "law" and adding a sentence "Where not otherwise mandatory, reasons for a decision shall be provided on request according to law." The representative of the Federal Republic of Germany, while referring to article 13 of the International Covenant on Civil and Political Rights stressed that the provisions of the present paragraph should be in harmony with the provision of article 13 of the Covenant, as the notion of expulsion included the specific case of a migrant worker who has to be expelled immediately after arriving in a country where he was not accepted. In referring to the suggestion made by the representative of the Federal Republic of Germany, the representative of Italy pointed out that the article addressed the case of a migrant worker who might be expelled from the territory of a State and not to be the case of a migrant worker who had not yet entered the territory of that State.

103. The representative of Italy, in accepting the proposal of the representative of Australia to end the last sentence after the word "law", said that his doubts remained as regards the concept of expulsion and that its meaning should be clarified in the report. The representative of Greece proposed adding the words "by the competent authorities" after the word "law" in the Australian proposal.

104. After informal consultations, the delegations of Australia, Finland and the Netherlands submitted the following texts for article 22, paragraphs 2 and 3:

"2. Migrant workers and members of their families may be expelled from the territory of a State Party to the present Convention only in pursuance of a decision taken by the competent authority in accordance with law.

"3. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and the reasons for the decision stated. They shall be informed promptly of these rights and of the decision in a language which they can understand."

105. The representative of Sweden proposed a revision to the new proposal for article 22, paragraph 3, to read as follows:

"3. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated."

106. The representative of the Federal Republic of Germany stated that he could not agree with the new text for paragraph 3 and recalled his two alternative proposals for paragraph 3 submitted earlier which read as follows:

"Proposal A:

"Except where compelling reasons of national security otherwise require the person concerned shall be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

"Proposal B:

"The person concerned shall be allowed:

"(a) to submit reasons against his expulsion;

"(b) to have his case reviewed; and

"(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

"The person concerned may be expelled before the exercise of his rights under the first sentence, subparagraphs (a), (b), and (c), of this article, when such expulsion is necessary in the interests of public order (ordre publique) or is grounded on reasons of national security."

107. The representative of Australia, speaking in relation to the proposal of Sweden, stated that his delegation could accept that proposal as it was in accordance with the way matters were handled in Australia. The representative of Morocco said that in a spirit of compromise she would accept the Swedish amendment. The representative of the United States stated that he would not object to the new text proposed by Australia, Finland and the Netherlands, but expressed the doubts of his delegation that the provision in the text calling for the decision to be communicated, upon request, in writing, constituted a fundamental human right.

108. At its 7th meeting on 4 June, the Working Group adopted article 22, paragraph 2, reading as follows:

2. Migrant workers and members of their families may be expelled from the territory of a State Party to the present Convention only in pursuance of a decision taken by the competent authority in accordance with law.

109. After a brief discussion, at its 8th meeting on 4 June, the Working Group adopted article 22, paragraph 3, as follows:

3. The decision shall be communicated to them in a language which they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The person concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

110. The representative of the Federal Republic of Germany stated that his delegation, while maintaining the opposition which it had expressed earlier with regard to that paragraph, would be satisfied with having its position reflected in the report, in order not to oppose the consensus.

111. The Working Group then took up discussion of article 22, paragraph 4, on the basis of the MESCA text, reading as follows:

"4. Except where the decision is pronounced by a judicial authority the person concerned shall have the right to appeal against it. If the appeal is to be examined by a judicial authority, the execution of the decision shall be stayed except where reasons stated therefore involve substantial requirements of national security or public order. If a decision which has been the subject of such immediate execution is subsequently annulled, the person concerned shall have the right to compensation according to law."

112. The representative of Australia suggested revising the second sentence of paragraph 4 to read as follows:

"Pending determination of an appeal, the person concerned shall have the right to seek a stay of the decision of expulsion."

113. The representative of Finland suggested adding the word "... if so requested by the person concerned" after their words "... shall be stayed ...".

114. The representative of Norway suggested revising the second sentence of paragraph 4 to read as follows:

"During the pendency of the review the person concerned shall have the right to seek a stay of the decision of expulsion ...".

115. The representative of Yugoslavia suggested adding the following words at the end of paragraph 4:

"including the right to return to the receiving country".

116. The representative of the Federal Republic of Germany stated that his delegation could not accept that a text based either on article 13 of the International Covenant on Civil and Political Rights or on article 1 of Protocol No. 7 to the European Convention for the Protection of Human Rights, as those two provisions were, should protect only aliens legally present in the territory of another State. An identical provision should be inserted into part IV of the convention. Since the Group was not prepared to follow up that suggestion, he stated that, while maintaining it, his delegation would be satisfied, so as not to stand in the way of a consensus, to have it placed on record in the report.

117. The representative of Finland decided to withdraw his amendment. In view of the Australian proposal the representative of Norway also withdrew his proposal. However, he voiced the doubt of his delegation concerning the word "appeal" and stated that he would prefer instead a review by administrative as well as judicial authorities.

118. The representative of Yugoslavia revised his amendment (para. 115 above) by adding at the end of the last sentence the following words: "... and the earlier decision shall not be used to prevent him from re-entering the State concerned." The representative of Greece supported that revision.

119. The Tunisian delegation said that it strongly supported the idea of provision being made in the convention for the right of all migrant workers and/or members of their families to have an opportunity to appeal to higher (administrative or judicial) authorities in order to request a review of the decision of expulsion, before execution of the decision.

120. The representative of China expressed the concern of his delegation as regards the word "appeal". He proposed instead to replace it by the word "review".

121. The representative of the United States pointed out that in his country judicial and administrative decisions could be appealed.

122. The representative of the Soviet Union proposed rewording the first sentence of the MESCA text to include the following:

"... to appeal or to be reviewed in accordance with municipal or national law".

123. The representative of the United States put forth two proposals as follows:

(a) To replace the first sentence by the following:

"A decision of expulsion shall be subject to review by a higher authority".

(b) At the beginning of the second sentence, to add the following words:

"In cases where review of a decision of expulsion is sought, the ...".

After a lengthy debate, the Chairman invited the delegations of Finland, Italy, the United States, the Soviet Union and other interested delegations to meet in informal consultations to discuss further.

124. At its 9th meeting, on 5 June, the Working Group had before it a text for article 22, paragraph 4, which had emerged from the informal consultations. The Working Group adopted that text which reads as follows:

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason against his expulsion and to have his case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

125. The Chairman also said that following the consultations a new paragraph would be added as paragraph 5 reading as follows:

"5. If a decision of expulsion which has already been executed is subsequently annulled the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him from re-entering the State concerned."

126. The representative of the Federal Republic of Germany recalled that, as he had already stated at a previous meeting, his delegation could not go along with new paragraph 5 as it was formulated; however, not wishing to go against the consensus, it would be satisfied with having its position recorded in the report.

127. The representative of Sweden pointed out that in case of error or neglect compensation was possible under Swedish law. However, there was no general right to compensation.

128. At the 9th meeting on 5 June, the Working Group adopted paragraph 5 of article 22 as it had been read out by the Chairman.

129. At its 6th meeting on 3 June, the Working Group took up consideration of paragraph 6 on the basis of a revised version of paragraph 5 of the MESCA text introduced by the representative of Finland as follows:

"5. Without prejudice to the execution of the decision of expulsion, the person concerned shall be allowed to obtain the settlement of any claims for wages and other entitlements due to him by his employer, to settle any contractual liabilities and, where this appears necessary for reasons of personal security, be allowed a reasonable opportunity to seek entry to a State other than his State of origin. Account shall be taken of the person's family circumstances."

130. The representative of Turkey expressed his preference for the wording "In case of expulsion" as established after the first reading, rather than "Without prejudice to the execution of the decision" contained in the Finnish proposal.

131. The representative of Greece suggested replacing the words after "... contractual liabilities" by the following:

"... and where reasonable grounds exist relating to personal security, the authorities of the expelling State shall grant the migrant worker and members of his family an opportunity to seek entry to a State other than his State of origin."

132. The representative of Morocco, supported by the representatives of Italy and India, voiced her objection to the proposal made by the representative of Greece, stressing that the draft Convention addressed migrant workers and not political refugees who were protected under other international instruments.

133. The representative of China also expressed doubts about including such a provision in the paragraph, stating that the concept was too vague.

134. The representative of Algeria stressed that she would like to keep the idea of a reasonable period of time to enable the migrant worker to settle his affairs before departure from the receiving State. That idea appeared both in the text as it had emerged from the first reading and in the MESCA text.

135. The representative of Tunisia stated that his delegation would prefer the original wording used in the first reading "In case of expulsion", rather than the proposal by MESCA "Without prejudice to expulsion". He stated that his delegation was in favour of maintaining the words "délai raisonnable". The representative of Senegal drew attention to the difficulty of interpreting exactly what could be considered a "reasonable opportunity".

136. The representative of Finland stated that the term "reasonable opportunity" was more ambiguous and restrictive than the wording contained in the current MESCA proposal for paragraph 5 and gave rise to difficulty of interpretation in whatever

body was given that interpretation. He further stated that in regard to the phrase "for reasons of personal security" the intention of MESCA was to give the migrant worker an opportunity to seek an alternative to find employment in another State.

137. The representative of Sweden stated that in the opinion of his delegation there were too many ideas involved in the same paragraph, that it was not the place to deal with the problem of refugees and that he would prefer to leave the question aside.

138. The representative of the United States stated that the opportunity to seek entry into a State other than the State of origin should not appear in the present paragraph. Concerning the term "a reasonable delay" he explained that in his country the order for expulsion took effect immediately. His delegation supported the compromise version put forth by the representative of Finland and he stated that he wished to have reflected in the report the view of his delegation that the responsibility for the supervision of the present Convention should lie with ILO.

139. The representative of the Federal Republic of Germany cautioned that allowing a person a "reasonable opportunity" amounted to granting him the "right" to a reasonable period of time. He proposed the following formulation for paragraph 5:

"The competent authorities of the State concerned shall endeavour, at the time of the execution of a decision relating to the expulsion of a migrant worker or a member of his family, to take into consideration also any difficulties that may arise from the fact that the person concerned has not yet obtained the settlement of any claims for wages and other entitlements due to him by his employer or has not yet settled any contractual liabilities."

140. The representative of the United States, supporting the representatives of Italy and the Soviet Union, suggested rewording paragraph 5 to request the expelling State to take into account any contractual obligations of the person concerned, as follows:

"5. In case of expulsion, the authorities of the expelling State shall give consideration to delaying the execution of the order of expulsion or taking other appropriate steps in order to allow the person concerned to settle his affairs, in particular to receive any wages or other entitlements due to him and to discharge any contractual obligations."

141. The representative of China stated that in a spirit of co-operation his delegation proposed the following amendment to paragraph 5:

"In case of expulsion, the person concerned shall be allowed, prior to the execution of the expulsion, to request a grace period from the competent authorities to settle any claims for wages and other entitlements due to him by his employer and to settle any contractual liabilities. Such request, if reasonable, should be given positive consideration to the best extent that the law of the receiving state permits."

142. The representative of Greece proposed adding, after the words "contractual liabilities", the following:

"... and where reasonable grounds exist relating to personal security, the authorities of the expelling State shall grant the migrant worker and members of his family an opportunity to seek entry to a State other than his State of origin."

143. The representative of the United States proposed replacing that paragraph by a new paragraph reading as follows:

"In case of expulsion, the authorities of the expelling State shall give consideration to delaying the execution of the order of expulsion or taking other appropriate steps in order to allow the person concerned to settle his affairs, in particular to receive any wages or other entitlements due to him and to discharge any contractual obligations."

144. At the 15th meeting on 10 June, the Chairman said that, following informal consultations, it did not yet appear possible to reach agreement on paragraph 5 which has become paragraph 6. Thus, consideration of that paragraph would remain pending and would be resumed at the Working Group's next session on the basis of the following text:

"6. In case of expulsion, the person concerned shall, whenever practicable, have a reasonable period before departure to arrange the settlement of any claims for wages and other entitlements due to him and of any contractual liabilities."

145. At its 13th meeting on 9 June, the Chairman announced that as a result of informal consultations a text for article 22, paragraph 7, had been agreed on. At that same meeting the Working Group adopted the text of paragraph 7 reading as follows:

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his family who is subject to such a decision may seek entry into a State other than his State of origin.

146. The representative of Turkey placed on record that, while joining in the consensus which had emerged on the adoption of paragraph 7 of article 22, his delegation was opposed to the proliferation of provisions aimed at protecting migrant workers against their own State of origin. Inasmuch as exceptions should not prejudice the rule, his delegation believed that the State of origin bore the primary responsibility with regard to protection, and it therefore did not endorse the concept that formed the basis of paragraph 7. Moreover, his delegation considered that it was not appropriate to broaden the scope of the present convention to include more general considerations relating to the protection of refugees.

147. The representative of Tunisia stated that the Tunisian delegation had doubts concerning the usefulness of paragraph 7 within the framework of the present

convention. It felt that the latter should try to settle basic questions concerning the situation of migrant workers and should not devote too much attention to very exceptional circumstances. His delegation also felt that the principle remained the return of the worker to his State of origin; paragraph 7 could not in no way be interpreted as a provision dealing with a situation not covered by the convention, in the light of article 3 (d) of the convention.

148. The Working Group then turned to article 22 paragraph 8. As a result of informal consultations the Working Group adopted the paragraph on second reading as follows:

8. If a migrant worker or a member of his family is detained for the purpose of verifying any infraction of provisions related to migration he shall not bear any cost arising therefrom.

149. The Working Group then considered a text for paragraph 7 of the MESCA proposal for article 22:

"7. In any case of expulsion of a migrant worker or a member of his family, the costs of expulsion shall not be borne by them."

150. The representatives of the Federal Republic of Germany, Norway, the Netherlands, Australia and France expressed their objection to the inclusion of such a provision in the convention.

151. The representative of the United States made the following proposal for paragraph 9:

"9. A migrant worker or members of his family shall not be required to reimburse the expelling State for the cost of expulsion when such reimbursement would cause financial hardship for the person concerned except that an expelling State may require such reimbursement as a condition for re-entry."

152. At its 15th meeting, on 10 June, the Working Group adopted paragraph 9 of article 22 on second reading as follows:

9. In case of expulsion of a migrant worker or a member of his family the costs of expulsion shall not be borne by him. The person concerned may be required to pay his own travel costs.

153. The delegations of Norway and Australia placed on record their reservations on that paragraph on the ground that in the laws of their countries, certain costs associated with deportation were under the responsibility of the persons concerned. For example, in Norway if an escort was required to ensure the physical removal of a person, costs associated with the removal would be borne by him if he had the necessary resources. The Australian delegation advised that under Australian law, in the case of a person being deported, the Australian Government was not liable for either the detention costs prior to departure or the travel costs involved. In agreeing to the adoption of the paragraph, the Australian

delegation wished to place on record that the Australian Government was not prepared to accept liability for either of those costs as it did not regard them as being covered by the term "costs of expulsion". The delegations of Norway and Australia therefore reserved the right to lodge formal reservations at the appropriate time. The representative of the Federal Republic of Germany reiterated his delegation's opposition to the retention of that paragraph but stated that, so as not to go against the consensus, his delegation would be satisfied with having its position placed on record in the report.

154. The representative of Austria stated that coverage of costs of expulsion for a migrant worker or a member of his family, would be effected only in accordance with Austrian legislation.

155. At its 8th meeting on 4 June, the Working Group considered a text for paragraph 10 of article 22 on the basis of paragraph 6 of the MESCA text, reading as follows:

"Expulsion or departure from the receiving State shall not in itself prejudice any rights of a migrant worker or a member of his family acquired under the law."

156. The delegations of the Soviet Union and Italy proposed replacing the above-mentioned paragraph 5 by the following:

"Expulsion or departure from the receiving State shall not in itself prejudice any rights and obligations of a migrant worker or a member of his family acquired under the law; the concerned persons shall be allowed to obtain the settlement of any claims for wages and other entitlements due to them by the employer and to settle any contractual liabilities."

157. The representative of the United States proposed a new text for this paragraph reading as follows:

"Expulsion shall not in itself prejudice any legal rights or obligations of a migrant worker or a member of his family acquired under the law of the expelling State, including, in particular, the right to receive wages and other entitlements due to him."

158. The representative of the Federal Republic of Germany stated that his delegation could not accept the proposal. He thus suggested replacing it by a new paragraph which would become article 32, paragraph 1 reading as follows:

"1. Expiry of the stay of migrant workers and members of their families in the State of employment [or in the State of transit] shall not prejudice the rights acquired under the law of that State except in so far as the enjoyment or exercise of those rights is dependent on their residence in the State in question."

159. After a lengthy discussion and because of lack of time the Working Group decided to defer further consideration of that paragraph to its next session.

160. At its 15th meeting on 10 June the Working Group considered the original paragraph 7 of article 22 as it appeared after the first reading (A/C.3/39/WG.1/WP.1):

"[(7) In any case of expulsion or deportation, the authorities of the State of employment [shall bear the costs incurred and] [shall refrain from exerting pressure on the persons concerned in any manner in order to obtain their agreement to summary procedures such as "voluntary exit", when such agreement is not spontaneously forthcoming from the persons concerned.]]"

161. The representatives of the United States, the Federal Republic of Germany and France expressed their preference for the deletion of paragraph 7. Reference was made by the representative of the Federal Republic of Germany to the words "voluntary exit" which in his view had no place in the text in part because they appeared in quotation marks.

162. The representative of Italy said that the words "voluntary exit" were incompatible with the sense of expulsion itself. The representative of Finland stated that since the right of a migrant worker to leave the State of employment had been established in the draft convention, it did not seem necessary to include the text of paragraph 7.

163. Referring to the words "voluntary exit", the representative of Morocco supported by the representatives of Algeria and Yugoslavia, stated that the term often covered disguised expulsion which continued to be a problem. She suggested that words be inserted in the text indicating that the provision applied only to migrant workers in regular status.

164. The representative of the Federal Republic of Germany, referring to the latter proposal, said that his delegation might consider that provision if it were limited only to migrant workers in regular status and was transferred to part IV of the draft convention.

165. The Chairman invited comments from delegations as to whether paragraph 7 of article 22 should be considered under part III or part IV of the draft convention. Some delegations, although preferring to deal with that provision in part III, accepted, in a spirit of co-operation, to discuss it in part IV on the basis of the text as it had emerged from the first reading (A/C.3/39/WG.1/WP.1). The Working Group, at the same meeting, decided to consider the above-mentioned paragraph 7 of article 22 in part IV of the draft convention.

166. The text of the paragraphs of article 22 as adopted on second reading by the Working Group is as follows:

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party to the present Convention only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language which they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The person concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason against his expulsion and to have his case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion which has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him from re-entering the State concerned.

6. ...

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his family who is subject to such a decision may seek entry into a State other than his State of origin.

8. If a migrant worker or a member of his family is detained for the purpose of verifying any infraction of provisions related to migration he shall not bear any cost arising therefrom.

9. In case of expulsion of a migrant worker or a member of his family the costs of expulsion shall not be borne by him. The person concerned may be required to pay his own travel costs.

10. ...

Article 23

167. The Working Group considered a text for article 23 at its 9th, 10th and 16th meetings held on 5 and 10 June, on the basis of article 23 as contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"(1) Migrant workers and members of their families shall have the right to seek consular [and diplomatic] protection [and appropriate assistance] from the authorities of their State of origin or those representing the interests of that State [and to receive from them legal advice and counsel] whenever the rights recognized in this Convention or their rights under the legislation of the State of employment [receiving country] are impaired.

/...

"[(2) The consular [or diplomatic] authorities of the State of origin or those representing the interests of that State shall be notified of any decision to expel a migrant worker or a member of his/her family [legally present in the State of destination] at least forty-eight hours before the expulsion is to take effect.]"

168. With regard to the first bracketed words, "and diplomatic", it was pointed out by some delegations that the purpose of this article was to ensure the right of migrant workers to have recourse to consular protection.

169. Regarding the second set of bracketed words, "and appropriate assistance", some delegations expressed their preference for the retention of those words while others advocated their deletion. As to the third set of bracketed words, "and to receive from them legal advice and counsel", some delegations favoured their deletion, pointing out that it was up to each consular authority to determine how it would assist a migrant worker. Concerning the last set of bracketed words in paragraph 1, "receiving country", it was suggested that the term "State of employment" should be maintained as the Working Group had done throughout the convention.

170. The representative of the Soviet Union suggested that the last part of paragraph 1 be amended to read "... whenever their rights recognized under international law or under the legislation of the State of employment are impaired".

171. At the same meeting, the representative of the Federal Republic of Germany expressed his delegation's marked preference for the wording of that paragraph to be based on that of article 36, paragraph 1 (a), of the Vienna Convention on Consular Relations. Aware that that might pose some problems for States which had not ratified that Convention, he proposed the following text:

"1. Consular protection for migrant workers and members of their families is assured in accordance with the pertinent treaties applicable between the States concerned."

172. Referring to the latter proposal some representatives said that it would pose difficulties since bilateral agreements might not exist between countries on consular matters. The representative of the Federal Republic of Germany stated that, although his delegation would prefer to see paragraph 1 adopted as he had proposed it, in a spirit of co-operation, he would not insist on his proposal if it did not gain the Working Group's consensus.

173. The representative of Sweden proposed amending paragraph 1 to read as follows:

"1. Migrant workers and members of their families shall have the right to seek protection and assistance from the consular and diplomatic authorities of their State of origin."

174. The representative of Greece suggested that the provisions of paragraph 1 would be rendered more accurate if its beginning was amended to read "Migrant workers shall not be prevented from seeking and receiving ...".

175. At its 10th meeting on 5 June, the Working Group adopted paragraph 1 of article 23 on the basis of a proposal by the Chairman as follows:

1. Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic representatives of their State of origin whenever the rights recognized in the present Convention are impaired.

176. The Working Group took up consideration of paragraph 2 of article 23 at its 10th meeting on 5 June.

177. Commenting on paragraph 2, the representative of the Federal Republic of Germany stated that his delegation would prefer to limit that provision to migrant workers in a regular situation or to delete the paragraph as a whole. The representatives of France and Australia said that it should be left up to the individual concerned to contact his national authorities. The representatives of Venezuela, Australia and the United States also favoured the deletion of the paragraph.

178. The representatives of Finland, Greece, Italy, the Netherlands, Norway and Sweden pointed out that it might not be in the interest of the person concerned if his national authorities were informed in all cases. The representative of Finland suggested adding to the paragraph a phrase indicating that information should be given to the consular or diplomatic authorities only with the consent of the person concerned.

179. The representatives of Yugoslavia, Egypt, Turkey, India, Senegal and Tunisia favoured the retention of paragraph 2 and stated that it should cover all migrant workers and thus the words "legally present" should be deleted.

180. The representatives of India and Algeria stated they did not agree that it might not be in the migrant worker's interest for his consular or diplomatic authorities to be informed of his expulsion. In their opinion, informing the migrant worker of his right to seek consular or diplomatic protection before execution of the decision of expulsion should not be made contingent upon a request to that effect by the person concerned, as he might not be aware of the existence of such a right. Notification of the decision of expulsion to the consular or diplomatic authorities should take place promptly and before any execution of the decision of expulsion.

181. The representative of Morocco said that paragraph 2 should be at the end of article 22 concerning expulsion.

182. At the same meeting, the representative of Greece proposed the following text for paragraph 2.

- "2. The consular authorities of the State of origin or those representing the interests of that State shall be promptly and upon request by the person concerned notified of any decision of expulsion."

The proposal was supported by the representative of the Netherlands.

/...

183. In the light of the discussions held, the Chairman suggested the following text for paragraph 2:

- "2. In case of expulsion the migrant worker or members of his family concerned shall be clearly informed of his right without delay and the authorities of the expelling State shall not hamper or prevent in any manner the exercise of this right."

184. The Working Group exchanged views on the Chairman's suggestion. Following the discussion the Chairman amended his suggestion to read as follows:

- "2. In case of expulsion the migrant worker or members of his family concerned shall be clearly informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right without prejudice to the decision of expulsion."

185. At its 16th meeting on 10 June, the Working Group had before it a text for paragraph 2 of article 23 which had emerged from the informal consultations. At the same meeting the Working Group decided to adopt it as paragraph 2 of article 23, reading as follows:

2. In particular, in case of expulsion the migrant worker or members of his family concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

186. The representative of the Federal Republic of Germany requested the deletion of that paragraph, because his delegation was opposed to any obligation on States of employment to inform the consular authorities of States of origin in cases of expulsion. He stated, however, that, in order to block the consensus, his delegation would be satisfied with having its position recorded in the report.

187. The representative of Greece stated that he would not object to the adoption of the paragraph as suggested by the Chairman; however, he wished to place on record his delegation's preference to use the words "shall not hamper or prevent" instead of the words "shall facilitate".

188. The representative of Venezuela stated that his delegation wished to associate itself with the views expressed by the delegations which had preceded him since his delegation was also concerned about the term "facilitate", because it lent itself to various interpretations. As he had pointed out earlier, paragraph 2 of article 23 as it appeared in document A/C.3/39/WG.1/WP.1 raised serious problems for his delegation, since it did not believe that the State of employment had an obligation to notify the consular or diplomatic authorities of the State of origin of the migrant worker.

189. The representatives of the Netherlands, Norway, Italy and the United States stated that they interpreted the word "facilitate" in such a way so as not to imply any obligation which was not already implicit in the Vienna Conventions on Consular and Diplomatic Relations.

190. The representative of Algeria stated that his delegation could, in a spirit of compromise, agree to the text suggested by the Chairman but that it would have preferred the retention of the text that had emerged from the first reading, which stipulated the obligation on the State of employment to notify the consular or diplomatic authorities of the expulsion of a migrant worker at least 48 hours in advance.

191. The representative of Australia stated that his delegation could accept the term "facilitate" only to the extent that it did not imply more than the obligations assumed by a receiving State under the Vienna Convention on Consular Relations.

192. The delegation of France said that it could not agree to the wording proposed for paragraph 2 unless it was stipulated that that provision should not be interpreted as having the effect of hampering or delaying execution of the decision of expulsion.

193. The text of article 23 as adopted on second reading by the Working Group reads as follows:

Article 23

1. Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic representatives of their State of origin whenever the rights recognized in the present Convention are impaired.
2. In particular, in case of expulsion the migrant worker or members of his family concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right.

Article 24

194. At its 10th meeting on 5 June, the Working Group adopted article 24 on second reading as it had emerged from the first reading as follows:

Every migrant worker and every member of a migrant worker's family shall have the right to recognition everywhere as a person before the law.

Article 25

195. The Working Group considered article 25 at its 10th meeting on 5 June on the basis of the following text which had emerged from first reading:

"(1) All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the receiving State in respect of remuneration and:

"(a) Other conditions of work, that is to say overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national laws or practice, are covered by this term;

"(b) Other terms of employment, that is to say minimum age of employment, restriction on home work and any other matter which, according to national laws and practice, are considered a term of employment.

"(2) It shall not be lawful to derogate from the principle of equality of treatment referred to in paragraph 1 above.

"(3) The States Parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any such irregularity."

196. The representative of the Federal Republic of Germany said that some of the articles relating to the working and social conditions as well as the working life of migrant workers in general should belong in part IV of the draft convention. He pointed out that, from article 25 on, the provisions of the convention departed radically from those of the Covenants, which proved that the authors of the texts which had emerged from the first reading of the draft convention had already realized that it was no longer possible, as in the first provisions of part III, simply to reproduce the texts of the Covenants. As regards social conditions and working life, simply placing migrant workers, and in particular those in an irregular situation, on a footing of equality with national workers in the States of employment would prove increasingly impracticable.

197. At the same meeting, support for the article as a whole was expressed by the representatives of the Soviet Union, Finland, Italy, India and the Netherlands.

198. The Chairman pointed out that article 25 referred to the rights of a migrant worker vis-à-vis his employer.

199. The representative of Italy stated that paragraph 2 concerned individual contracts; the substance of the paragraph was that if the provision of a contract went contrary to the principle of equality of treatment it would be nullified on the basis of that paragraph.

200. The representative of Sweden said that his delegation had some difficulties with paragraph 1 and especially subparagraph (a) concerning termination of the employment relationship.

201. The representative of the United States suggested that paragraph 1 be opened with the words:

"States parties to the Convention shall ensure that ..."

202. The Working Group decided to replace the words "receiving State" by the words "State of employment" in the second line of the first paragraph, as was done throughout the convention. After a brief discussion the Working Group adopted paragraph 1 (a) and (b) as follows:

1. All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national laws or practice, are covered by this term;

(b) Other terms of employment, that is to say minimum age of employment, restriction on home work and any other matter which, according to national laws and practice, are considered a term of employment.

203. Turning to paragraph 2, the representative of the United States suggested inserting the words "private contracts of employment" after the word "derogate" in the first line.

204. The representative of Finland stated that his delegation would prefer the initial wording of the paragraph.

205. The representative of the United States agreed not to object to the adoption of paragraph 2 on the clear understanding that the rights and obligations contained in the convention would be binding only on States Parties and would not constitute a codification of customary international law.

206. As various delegations did not object to the proposal made by the representative of the United States relating to paragraph 2, the Working Group decided to adopt paragraph 2 as follows:

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 above.

207. Turning to paragraph 3, the Working Group adopted it as it stood.

208. Regarding paragraph 1 of article 25, the delegation of Austria was assured that the purpose of the article was merely to provide for equal treatment under the labour law regulations. With respect to paragraph 3 of article 25, the representative of Austria placed on record the reservation of her delegation. In Austrian labour legislation, a foreign worker, if employed without a work permit, was not entitled to claims arising in connection with notice of dismissal or termination. Since, in practice, employment without a legal work permit was illegal, employment could be terminated by both parties at any time without any advance notice.

209. The text of article 25, as adopted by the Working Group on second reading, reads as follows:

Article 25

1. All migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the receiving State in respect of remuneration and:

(a) Other conditions of work, that is to say overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national laws or practice, are covered by this term;

(b) Other terms of employment, that is to say minimum age of employment, restriction on home work and any other matter which, according to national laws and practice, are considered a term of employment.

2. It shall not be lawful to derogate from the principle of equality of treatment referred to in paragraph 1 above.

3. The States Parties to the present Convention shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of any such irregularity.

Article 26

210. The Working Group considered a text for article 26 at its 11th and 12th meetings on 8 June on the basis of article 26 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"Article 26

"(1) The States Parties to the present Convention recognize the right of all migrant workers and members of their families:

"(a) To take part [freely] in [peaceful] meetings and activities of trade unions and of other associations [apart from political parties and organizations] [legally] established for the protection of economic, social, cultural and similar interests [subject only to the rules of the organization concerned];

"(b) To join any trade union and any such association as aforesaid [, subject only to the rules of the organization concerned];

"(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

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

211. During the consideration of this article, the representative of the Federal Republic of Germany stated that in the view of his delegation the provisions of the article should have been maintained in part IV of the Convention, as the article addressed only migrant workers in a regular situation and that the reference to taking part in trade union activities or joining associations could be applicable only to migrant workers who were lawfully admitted in a State. In his delegation's opinion, guaranteeing trade union freedom to persons who, on account of their irregular situation which obliged them to refrain from joining in any public demonstration, would never be able to exercise that right, would, in a way, be tantamount to not taking seriously the trade union freedom to which his Government attached the highest importance.

212. The representative of Finland stated that his delegation would support the deletion of all the text within brackets because in his view it was ambiguous and redundant. The saving clause contained in paragraph 2 of the article was sufficiently explicit and the text without those words in brackets would be much closer to instruments already adopted by the International Labour Organisation in that field.

213. The representative of Venezuela stated, in regard to paragraph 1 (a), that his delegation took the view that the phrase "apart from political parties and organizations", at present in brackets, should be retained, because it would cover the prohibition which existed in almost all States on the intervention or participation of aliens in political matters that were reserved for nationals or citizens of the State of employment.

214. The representative of the Soviet Union suggested that the word "only" contained within brackets in the last sentence be deleted. It seemed that there was a contradiction when speaking of legally established political parties and organizations and then of taking part in activities and meetings subjected only to the rules of the organization concerned, because those interests should also be subject to the rules of the State of employment.

215. The representative of Yugoslavia stated that his delegation would prefer to retain the words "peaceful" and "legally". The delegation of India suggested the deletion of the words "peaceful" and "freely". The representative of Greece supported the deletion of all the words in brackets. He stressed the danger of retaining the word "peaceful" as some purportedly peaceful demonstrations or activities might take violent turns.

216. The representatives of Morocco, Yugoslavia and India, expressed their strong objections to the inclusion of provisions allowing the participation of migrant workers in any political activities in the State of employment. In that connection they stressed that migrant workers could, through such participation, be subjected to exploitation leading to their expulsion from the State of employment.

217. The representative of Algeria stated that her delegation would also like to see the word "legally" maintained in paragraph 1 (a).

218. The representative of the Netherlands voiced the concern of his delegation, that in the paragraph in question the freedom to join trade unions should be made as broad as possible. His delegation was in favour of deleting all the text within brackets in paragraph 1 (a) except for the words "freely".

219. The representative of Italy, while referring to article 22 of the International Covenant on Civil and Political Rights, stated that there was no need in the present convention to qualify the right to freedom of association with others or the right to join trade unions; the objective of this provision of the convention was to ensure the right of migrant workers to take part in the activities of trade unions as they existed in the State of employment and not to deal with the legality or illegality of the establishment of those trade unions.

220. The representative of Ghana stated that her delegation preferred to see the words "freely" and "peaceful" retained and supported other delegations who had pointed out the danger to which migrant workers may be exposed if allowed to participate in political activities or join political parties.

221. The representative of Australia stated that his delegation did not have any difficulty in removing all the words in the brackets in the text of paragraph 1 (a). He expressed the particular objection of his delegation to retaining the words "apart from political parties and organizations" and the word "legally", which could be seen as a serious derogation from human rights standards.

222. The representative of China stated that his delegation could go along with the Group in eliminating the words within brackets, on the understanding that that would not be contrary to China's legislation and practice whereby foreigners could not join any political parties in China.

223. After some discussion the Working Group agreed to delete the words "freely" and "peaceful" contained in brackets in paragraph 1 (a).

224. The representative of France stressed that article 26 as proposed should be read in conjunction with article 77 relating to the general provisions of the draft convention in document A/C.3/39/WG.1/WP.1.

225. With regard to the words "apart from political parties and organizations" the delegations of Morocco, Tunisia and Algeria stressed their preference for retaining those words in the paragraph without the brackets.

226. On the other hand the representative of Finland stated that his delegation had serious doubts concerning the retention of the words "apart from political parties and organizations", especially "and organizations". He drew attention to the difficulty involved in defining the word "organization". The representative of the Netherlands stated that in the view of his delegation those words limited the freedom of the migrant worker to join various organizations. His delegation was

not in favour of maintaining them in the present paragraph. He suggested instead inserting the words "and other non-political associations" after the word "other" in the first line and eliminating the words "apart from ... organizations".

227. The representative of Portugal supported the view expressed by Finland favouring the deletion of the words "apart from political parties and organizations".

228. The representative of Morocco stated that in a spirit of compromise her delegation could support the proposal made by the representative of the Netherlands. She then suggested the deletion of the words "and similar" at the end of the third line. The representative of Algeria said that her delegation could support the amendment proposed by the Netherlands on condition that the word "legally" at the beginning of the third sentence be maintained. She supported the proposal to delete the words "and similar".

229. The representative of Italy objected to retaining the word "legally" because in his view trade unions and other associations were not necessarily legally registered bodies. He suggested using the word "lawfully".

230. The representative of the United States proposed adding the word "any" before the words "other associations" in line 2. He supported the proposal of the representative of Italy to replace the word "legally" by the word "lawfully" and suggested that it be placed before "meeting" and not before "established".

231. The representative of Australia supported the proposal made by the representative of the United States to replace the word "legally" by the word "lawfully".

232. In that connection the representative of Italy voiced his preference for the term "in accordance with national legislation" rather than "lawfully".

233. The representative of Finland expressed the doubts of his delegation about the word "legally". The representative of Yugoslavia stated that his delegation would have preferred the term "lawfully established" rather than "legally".

234. The representative of the Soviet Union said that his delegation would also prefer to use the word "lawfully".

235. The representative of India stated that his delegation would prefer to retain the term "legally" and the words "subject only to the rules of the organization concerned".

236. Turning to the words "to take part in ... associations ... for the protection of economic, social, cultural and similar interests ..." the representative of Italy, supported by the representative of Greece, objected to retaining the phrase as it stood, because in his view the activities in which migrant workers could take part were too restrictive if worded in that way. His delegation would have preferred a broader term. The representative of the United States also stated that in the view of his delegation the term was too restrictive.

217. The representative of Algeria stated that her delegation would also like to see the word "legally" maintained in paragraph 1 (a).

218. The representative of the Netherlands voiced the concern of his delegation, that in the paragraph in question the freedom to join trade unions should be made as broad as possible. His delegation was in favour of deleting all the text within brackets in paragraph 1 (a) except for the words "freely".

219. The representative of Italy, while referring to article 22 of the International Covenant on Civil and Political Rights, stated that there was no need in the present convention to qualify the right to freedom of association with others or the right to join trade unions; the objective of this provision of the convention was to ensure the right of migrant workers to take part in the activities of trade unions as they existed in the State of employment and not to deal with the legality or illegality of the establishment of those trade unions.

220. The representative of Ghana stated that her delegation preferred to see the words "freely" and "peaceful" retained and supported other delegations who had pointed out the danger to which migrant workers may be exposed if allowed to participate in political activities or join political parties.

221. The representative of Australia stated that his delegation did not have any difficulty in removing all the words in the brackets in the text of paragraph 1 (a). He expressed the particular objection of his delegation to retaining the words "apart from political parties and organizations" and the word "legally", which could be seen as a serious derogation from human rights standards.

222. The representative of China stated that his delegation could go along with the Group in eliminating the words within brackets, on the understanding that that would not be contrary to China's legislation and practice whereby foreigners could not join any political parties in China.

223. After some discussion the Working Group agreed to delete the words "freely" and "peaceful" contained in brackets in paragraph 1 (a).

224. The representative of France stressed that article 26 as proposed should be read in conjunction with article 77 relating to the general provisions of the draft convention in document A/C.3/39/WG.1/WP.1.

225. With regard to the words "apart from political parties and organizations" the delegations of Morocco, Tunisia and Algeria stressed their preference for retaining those words in the paragraph without the brackets.

226. On the other hand the representative of Finland stated that his delegation had serious doubts concerning the retention of the words "apart from political parties and organizations", especially "and organizations". He drew attention to the difficulty involved in defining the word "organization". The representative of the Netherlands stated that in the view of his delegation those words limited the freedom of the migrant worker to join various organizations. His delegation was

not in favour of maintaining them in the present paragraph. He suggested inserting the words "and other non-political associations" after the word "other" in the first line and eliminating the words "apart from ... organizations".

227. The representative of Portugal supported the view expressed by Finland favouring the deletion of the words "apart from political parties and organizations".

228. The representative of Morocco stated that in a spirit of compromise her delegation could support the proposal made by the representative of the Netherlands. She then suggested the deletion of the words "and similar" at the end of the third line. The representative of Algeria said that her delegation could support the amendment proposed by the Netherlands on condition that the word "legally" at the beginning of the third sentence be maintained. She supported the proposal to delete the words "and similar".

229. The representative of Italy objected to retaining the word "legally" because in his view trade unions and other associations were not necessarily legally registered bodies. He suggested using the word "lawfully".

230. The representative of the United States proposed adding the word "any" before the words "other associations" in line 2. He supported the proposal of the representative of Italy to replace the word "legally" by the word "lawfully" and suggested that it be placed before "meeting" and not before "established".

231. The representative of Australia supported the proposal made by the representative of the United States to replace the word "legally" by the word "lawfully".

232. In that connection the representative of Italy voiced his preference for the term "in accordance with national legislation" rather than "lawfully".

233. The representative of Finland expressed the doubts of his delegation about the word "legally". The representative of Yugoslavia stated that his delegation would have preferred the term "lawfully established" rather than "legally".

234. The representative of the Soviet Union said that his delegation would also prefer to use the word "lawfully".

235. The representative of India stated that his delegation would prefer to retain the term "legally" and the words "subject only to the rules of the organization concerned".

236. Turning to the words "to take part in ... associations ... for the protection of economic, social, cultural and similar interests ..." the representative of Italy, supported by the representative of Greece, objected to retaining the phrase as it stood, because in his view the activities in which migrant workers could take part were too restrictive if worded in that way. His delegation would have preferred a broader term. The representative of the United States also stated that in the view of his delegation the term was too restrictive.

237. The representative of Algeria stated that her delegation would prefer to retain the words "to take part ... in activities of trade unions ... for the protection of their economic, social, cultural interests".

238. Referring to articles 21 and 22 of the International Covenant on Civil and Political Rights, the representative of Morocco suggested deleting the words "and similar".

239. The representative of France proposed that the words "for the protection of ... interests" should be attached to the words "to take part" and not to the word "associations". He therefore suggested that a comma should be inserted after the word "established" and before the words "for the protection ..." and that the subparagraph should then be worded as follows:

"(a) To take part ...".

240. That proposal was supported by the representative of Senegal, who felt that it was for the migrant workers to determine what their own interests were.

241. The representative of the United States suggested replacing the words "for the protection" by the words "with a view to" and replacing the word "similar" by the word "other".

242. After some discussion the Working Group adopted article 26, paragraph 1 (a) as follows:

1. The States Parties to the present Convention recognize the right of all migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

243. The representative of Venezuela stated that, although his delegation would have preferred the retention of the words "apart from political parties and organizations" in the text of that paragraph, after hearing the argument that that concern was met in article 43, paragraph 3, it had decided not to stand in the way of the consensus.

244. The representative of the Netherlands stated that in a spirit of compromise his delegation would not hinder the consensus of the Working Group on the understanding that the present article should in no way limit the rights of migrant workers and members of their families as derived from the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

245. The delegations of Tunisia, Morocco, Algeria and Egypt, while associating themselves with the consensus, felt it useful to make it clear that, by the words "the protection of ... and other interests" they understood interests relating to

the intellectual rights and the maintenance of the national and religious identity of the migrant worker and the members of his family.

246. The representative of the United States said that in his view article 26 was intended to cover any and all interests of migrant workers and was not limited in the sense expressed by the delegations of Tunisia, Algeria, Morocco and Egypt.

247. The representative of the Federal Republic of Germany also stated that in a spirit of compromise he would not object to the adoption of the paragraph; however he wished to place on record his preference for retaining the words "freely" and "peaceful" and placing the article in part IV of the convention.

248. The representative of Sweden placed on record that in the view of his delegation the deletion of the word "peaceful" before "meetings and activities" did not imply that any distinction should be made between migrant workers and nationals if a meeting turned violent and the police had to intervene in order to restore order.

249. The representative of Turkey stated that his delegation interpreted the rights provided for in paragraph 1 (a) in terms of universal respect for the basic principles of a democratic and pluralistic society, with due regard for the requirements of national security and public order.

250. Turning to article 26, paragraph 1 (b), the representative of Morocco suggested adding the word "freely" after the word "join" in the first line.

251. The Working Group accepted the proposal made by the representative of Morocco and also decided to delete the brackets in subparagraph (b). The Working Group adopted subparagraph 1 (b) as follows:

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

252. The representative of Australia stated that his delegation interpreted "established in accordance with laws" in article 26, paragraph 1 (a), as "lawfully established", i.e. not in contravention of law.

253. The Working Group also adopted subparagraph 1 (c) and paragraph 2 of the article and adopted article 26 as a whole, reading as follows:

Article 26

1. The States Parties to the present Convention recognize the right of all migrant workers and members of their families:

(i) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

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

Article 27

254. The Working Group considered a text for article 27 at its 12th, 13th, 14th, 15th and 16th meetings on 8, 9 and 10 June on the basis of article 27 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"[(1) (a) Migrant workers and members of their families shall enjoy equality of treatment with nationals of the receiving State in respect of social security. As regards migrant workers and members of their family who are non-documented or in an irregular situation, States Parties may limit these rights to social security protection arising out of employment or to contributory benefits, [that is, benefits the grant of which depends on direct financial participation by the migrant workers or their employer or on a qualifying period of economic activity.]

"(b) Where the application of the preceding paragraph requires the conclusion of multilateral or bilateral agreements, such agreements shall, inter alia, make provision for the maintenance of acquired rights and of rights in the course of acquisition and for the payment of benefits outside the national territory including provisions for transfer of pension, continuity of social benefits and accumulation of contributive rights. Where such agreements are required, the States Parties to the present Convention shall spare no effort to conclude them.

"(c) In so far as migrant workers and members of their families are not specifically entitled to receive contributory social security benefits or to continue to receive such benefits, they shall be entitled to the reimbursement of the whole or such part of the contributions paid as may be appropriate.

"(2) Migrant workers and members of their families shall be entitled to claim compensation from an employer for any loss of social security benefits due to his omission to give the notices and to make the payments required by the social security scheme or schemes by which they should normally have been covered.]"

255. At its 12th meeting a number of representatives stated that their delegations had difficulty with article 27, paragraph 1, as adopted on first reading. The representative of the Netherlands stated that in his country there were many social security schemes and that very often it was the schemes which were not based on

contributory payments that were of the most importance to migrant workers and members of their families. He therefore raised the issue of the definition of the term "social security". In that connection the representative of the Netherlands proposed revising article 27, paragraph 1 (a), (b) and (c) to read as follows:

"1. (a) Migrant workers and members of their families shall enjoy equality of treatment with nationals of the receiving State in respect of social security (statutory provisions concerning medical care, sickness benefit, maternity benefit, invalidity benefit, old-age benefit, survivors' benefit, employment injury benefit, unemployment benefit and family benefit);

"(b) In this respect

"(i) Each State Party shall guarantee the provision of invalidity, old-age and survivors' cash benefits, benefits in respect of employment injuries, medical care, sickness benefit and maternity benefit to beneficiaries who are nationals of a State Party, irrespective of their place of residence, subject to measures for this purpose to be taken, where necessary, by agreement between the State Parties concerned;

"(ii) State Parties shall spare no effort to participate in schemes for the maintenance of rights in course of acquisition to guarantee the provision of benefits referred to in paragraph 1 above;

"(iii) Interested State Parties shall spare no effort to participate in schemes for the maintenance of rights acquired under the legislation as regards unemployment benefit, family benefit and rehabilitation benefit;

"(c) In so far as migrant workers and members of their families are not entitled to receive contributory benefits or to continue to receive such benefit due to the absence of bilateral or multilateral agreements, consideration should be given to the reimbursement of the whole or such part of the contributions paid as may be appropriate."

256. The Chairman drew the attention of the Working Group to the near impossibility of defining the term "social security" which had many different meanings as contained in each national legislation. Consequently, he suggested that in order to avoid having the Working Group embark on the extremely complex task of finding a universally acceptable definition, the results of which would be doubtful, the Working Group would be better advised to adopt a very general provision which would serve the purposes of the convention. He added that such an effort might be futile and might furthermore go beyond the mandate of the Working Group.

257. The representative of the Federal Republic of Germany proposed transferring article 27 to article 32, paragraph 6, and revising article 27, paragraph 1, to read as follows:

"Article 27 (1)

"(a) Migrant workers and members of their families shall not be excluded from the social security system of a State of employment simply because they are not nationals of that State;

"(b) States Parties to the present Convention undertake to spare no effort to conclude bilateral agreements or accede to multilateral agreements relating to social security in order to settle questions of detail arising out of the participation of migrant workers and members of their families in social security systems of States of employment;".

258. The representative of Austria stated that her delegation had difficulty with the provisions relating to "social security". She stressed that, according to Austrian legislation, the spheres of welfare services and social assistance were not covered within the provisions of the present article. Further, Austrian legislation in that matter did not provide for reimbursement of contributions.

259. The representative of Sweden stated that his Government also had difficulty with paragraph 1 (c), as in Sweden there was no provision for the reimbursement of social security, even for Swedish citizens who had left Sweden and were living abroad.

260. The representative of France noted that both articles 27 and 28 dealt with the issue of social security and in that connection he suggested placing article 28 before article 27.

261. The representative of Italy stated that in the view of his delegation the difficulty with article 27 as it stood after first reading was that it dealt with both regular and irregular migrant workers. He supported the suggestion of the representative of the Federal Republic of Germany to transfer the paragraph to part IV.

262. The Chairman recalled that in the past the Working Group had acknowledged the need to ensure benefits to migrant workers in an irregular situation if they were paying their contributions. He added that it would be worthwhile not to disregard that question provided that the Working Group decided that it was appropriate.

263. The representative of Morocco stated that in the view of her delegation a migrant worker who was paying social security contributions should be able to enjoy such benefits.

264. At the 13th meeting on 9 June, the Working Group resumed its consideration of article 27. Several delegations stated that it would be preferable to deal with article 27 on a more general basis.

265. The representative of the Federal Republic of Germany stated that in his view the area of social security was a very complex one, as it must be consistent with the national legislation of all the countries concerned, all of which contained different provisions. In that connection, he suggested adding the words "as

defined by the appropriate national legislation" after the words "social security" in the text.

266. The representative of the Soviet Union stated that in his view migrant workers in an irregular situation should enjoy at least some rights. He suggested the following revision of article 27, paragraph 1:

"irrespective of his status the migrant worker cannot be deprived of his social security benefits".

267. The representative of Greece stated that in many countries in order to receive social security benefits, the worker must be registered. He agreed with the suggestion made by several delegations that there should be a general provision to cover non-documented migrant workers who were contributing to the system.

268. The representative of India stated that his delegation found it difficult to go along with article 27 as adopted on first reading. In that connection his delegation would propose the inclusion in the article of a provision for the treatment of migrant workers in accordance with national law in the field of social security and reimbursement of social security benefits in the case of expulsion. In the view of his delegation such provisions should not be extended to migrant workers in an irregular situation.

269. The Working Group continued consideration of article 27 at its 14th meeting on 9 June. The Chairman read out the following text for the article in the light of the comments made at the previous meeting:

"1. With respect to social security, migrant workers and members of their family who are documented or are in a regular situation will enjoy in the State of employment the same treatment granted to nationals, in accordance with the applicable legislation of that State. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine, if such is the case, the modalities of application of this norm.

"2. Migrant workers and members of their families who are in the State of employment without the required documentation or are in an irregular situation will enjoy only those benefits of social security for which they have contributed, solely to the extent that this is not precluded by the applicable legislation and as long as the irregularity of their situation so allows. Where the applicable legislation or specific circumstances do not allow them any benefits, the competent authorities shall examine the possibility of reimbursing persons concerned the amount of contributions made by them with respect to benefits they cannot enjoy, on the basis of the treatment granted to nationals who are in similar circumstances."

270. The representative of the Federal Republic of Germany said that he could accept that text, but would wish the second paragraph reinforced with the addition of a reference to bilateral or multilateral conventions concluded in that area.

271. The representative of Finland expressed concern about the distinction made in the text as read out between documented and non-documented migrant workers. In his view, the article should contain the minimum standards applicable to all migrant workers. He suggested the deletion in paragraph 1 of the words "who are documented or are in a regular situation" and the addition of the words "in so far as they fulfil the requirements" between the word "nationals" and the phrase "in accordance with the applicable legislation of that State".

272. General agreement with the Chairman's text was also expressed by the representatives of the Netherlands and India, and the representative of Senegal found it a good basis for discussion and for seeking a compromise.

273. In that connection, the representative of Senegal stated that inasmuch as in social security matters, all migrant workers should be allowed to enjoy minimum standards with regard to benefits once they had contributed to those benefits, he wished to propose the deletion of the phrase "solely to the extent that it is not precluded by the applicable legislation and as long as the irregularity of their situation so allows". He later said that in so far as the problem for certain delegations was that they wanted a reference to the applicable legislation, he would be prepared, in a spirit of compromise, to accept the retention of the words "solely to the extent that it is not precluded by the applicable legislation", and would request the deletion of the remainder of the phrase: "and as long as the irregularity of their situation so allows".

274. The representative of the United States said that the article could be modified to apply to all migrant workers and as such be included in part III of the draft convention. Then a paragraph containing more rights for documented migrant workers could be included in part IV of the draft convention.

275. The representative of Italy suggested that article 27 be composed only of the first paragraph amended by deleting the words "who are documented or are in a regular situation" and adding at the end the words "and the applicable bilateral or multilateral agreements".

276. The representative of Greece suggested a text for article 27 reading as follows:

"Migrant workers and members of their families who are in the State of employment will enjoy those benefits of social security for which they have contributed, solely to the extent that this is not precluded in the applicable legislation and as long as the irregularity of their situation so allows. Where the applicable legislation or specific circumstances do not allow them any benefits, the competent authorities shall examine the possibility of reimbursing persons concerned the amount of contributions made by them with respect to benefits they cannot enjoy, on the basis of the treatment granted to nationals who are in similar circumstances.

"With respect to migrant workers and members of their families who are documented or are in a regular situation in the State of employment, they will enjoy the same treatment granted to nationals in accordance with applicable legislation of that State and with multilateral or bilateral treaties."

277. The representative of Finland expressed the view that the article should contain a general provision of equality of treatment while at the same time taking into account the varying scope of social security entitlements which could be accorded to documented and non-documented migrant workers. The provision also should include a minimum standard which would not prevent any State according more rights in accordance with its national legislation. In addition, a provision concerning social security entitlements to documented migrant workers should be found in part IV of the convention.

278. At its 16th meeting on 10 June, the Working Group decided to postpone further consideration of article 27 until its next session.

279. At the same meeting the Working Group had before it a proposal for article 45 in part IV of the Convention. The proposal read as follows:

"1. States Parties to the present Convention shall co-operate to ensure the respect of maintenance obligations concerning children of migrant workers and to regulate the exercise of the rights of custody and access relating to such children.

"2. The rights of dependent children of migrant workers and members of their family to maintenance and to a family relationship, including the right of custody and the right of access, shall be recognized [respected] by the States Parties in accordance with applicable rules and regulations."

Article 28

280. The Working Group considered article 28 at its 14th meeting on 9 June on the basis of the following text which had emerged from first reading (A/C.3/39/WG.1/WP.1):

[(1) All migrant workers and members of their families shall have the right to receive any medical care which is urgently required for the preservation of their life or the restoration of their health.

(2) Such emergency medical care shall not be refused to them by reason of any irregularity in their situation or in that of their parents with regard to stay or employment or by reason of the absence of any guarantee as to the payment of the expenses involved.]

[Emergency medical care required for the preservation of the life or the restoration of the health of migrant workers and the members of their families shall not be refused to them by reason of the irregularity of their situation or that of their parents with regard to stay or employment or by reason of the absence of a guarantee as to the payment of expenses involved.]

281. The representative of the Federal Republic of Germany expressed preference for the text in the right hand column amended, in its first part, as follows:

"Medical care which needs to be provided without delay so as to preserve the life or to avoid irreparable harm to the health of migrant workers and members of their families ..."

282. The representative of the United States, agreeing with the proposal by the Federal Republic of Germany, proposed the following formulation for the second part of the article:

"... shall be given to them, despite any irregularity of their situation or that of their parents with regard to stay or employment on a basis of equivalence with nationals of the State concerned."

283. The representative of Yugoslavia expressed reservations about the concept of equivalence contained in the amendment proposed by the United States. He pointed out that the situation of migrant workers was considerably different from that of nationals and that real equivalence could not exist.

284. Several delegations stated that they could go along with the substance of the proposal by the Federal Republic of Germany, as amended by the delegation of the United States, although some delegations would have preferred to work on the basis of the text as it appeared in the left-hand column.

285. The Chairman suggested a compromise text for article 28 which the Working Group adopted at its 14th meeting on 9 June as follows:

Article 28

1. All migrant workers and members of their families shall have the right to receive any medical care which is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equivalence with the nationals of the State concerned.

2. Such emergency medical care shall not be refused to them by reason of any irregularity with their situation or that of their parents with regard to stay or employment.

286. The representative of Yugoslavia reiterated his reservation concerning the concept of equivalence.

287. The representative of the Federal Republic of Germany, at the 15th meeting on 10 June, stated that he would have preferred it if article 28 were adopted on the basis of the text in the right-hand column. The text as adopted contained the word "ary" before the words "medical care" which could not be accepted by his delegation.

Article 29

288. The Working Group considered article 29 at its 14th meeting on 9 June on the basis of the following text which had emerged from first reading (A/C.3/39/WG.1/WP.1):

"[Children of all migrant workers shall have the basic right of access to education.] [Access by children of any migrant worker to pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of their own stay in the receiving State.]]"

289. The representative of the Federal Republic of Germany expressed his preference for inserting the text of that article in part IV of the draft convention. If the Working Group felt otherwise his delegation, in a spirit of co-operation, would not prevent its adoption by consensus, but wished his opinion reflected in the report.

290. The representative of Australia shared the preference for transferring the text of the article in part IV and wished to have that fact reflected in the report.

291. Several representatives spoke in favour of the retention of article 29 in part III of the draft convention. The representative of Yugoslavia proposed the deletion of all brackets and the reformulation of the first sentence as follows:

"Children of all migrant workers shall have the right to access to all forms, systems and degrees of education."

292. The representative of the United States said that he did not object to the text as it had emerged from the first reading with one amendment, i.e. to insert the word "public" before the word "pre-school".

293. Referring to pre-school education, the representative of France stated that in his country the criteria in some cases for access were left up to the municipalities. He expressed his preference for the text of article 29 being moved to part IV of the draft convention.

294. During further discussions the question was raised as to the meaning of the right of access to education. It was pointed out by the representative of the Soviet Union that the meaning of the first sentence was that access could not be refused or limited to children of migrant workers, i.e. they could not be discriminated against.

295. The representative of Italy said that in his view article 29 should not be interpreted as meaning that the irregularity in the status of a migrant worker could not be invoked for asking him to leave the country concerned.

296. The representative of Yugoslavia proposed the addition at the end of the first sentence of the words "on the basis of equivalence with nationals of the State concerned".

297. The representative of India indicated his difficulties in accepting the proposal made by Yugoslavia stated in paragraph 291 above. India had no difficulties with the United States proposal to insert the word "public" before "pre-school".

298. At the 14th meeting on 9 June, the Working Group adopted article 29, as amended by the representatives of Yugoslavia and the United States, as follows:

Article 29

Children of all migrant workers shall have the basic right of access to education on the basis of equivalence with nationals of the State concerned. Access by children of any migrant worker to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of their own stay in the receiving State.

Article 30

299. At its 16th meeting on 10 June, the Working Group considered a text for article 30 on the basis of article 30 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"[The irregularity of its own situation or of that of its parents shall not have the effect of depriving a child of its right to a name, to registration, or of the right to a nationality, with a view to reducing cases of statelessness.]"

300. At the same meeting the Working Group adopted article 30 on second reading as follows:

Article 30

Children of all migrant workers shall have the right to a name, to registration of birth and to a nationality.

Article 31

301. At its 16th meeting on 10 June, the Working Group considered a text for article 31 on the basis of article 31 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"[The States Parties to the present Convention shall ensure respect for the cultural identity of all migrant workers and their families and shall permit them to maintain their cultural links with their State of origin.]"

"[All migrant workers and their families shall enjoy the right to maintain their cultural dignity.]"

"[The States Parties to the present Convention shall recognize the right of all migrant workers and their families to maintain their cultural identity.]"

302. For the consideration of article 31, the Working Group had also before it a proposal submitted by Algeria, Morocco, Senegal, Turkey and Yugoslavia reading as follows:

"All migrant workers and their families shall enjoy the right to maintain their cultural identity.

"The States Parties to the present Convention shall ensure respect for the cultural dignity of all migrant workers and their families and shall take appropriate measures to assist and encourage their efforts to preserve their national identity and their cultural ties with their country of origin."

303. The representative of Yugoslavia made reservations to the wording of paragraph 2.

304. At the same meeting the Working Group decided to base its discussion on the proposal for article 31 contained in the left-hand column of document A/C.3/39/WG.1/WP.1.

305. The Working Group thus adopted a text for article 31 on second reading as follows:

Article 31

1. States Parties to the present Convention shall ensure respect for the cultural identity of all migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their country of origin.

2. States may take appropriate measures to assist and encourage efforts in this respect.

306. The delegation of Finland expressed the view that the last sentence of article 31 did not add anything to the prevailing situation, since it was the sovereign right of each State to decide whether to encourage and assist in the cultural activities of the migrant workers.

307. The representative of the Federal Republic of Germany stated that his delegation could accept only the version of article 31 in the lower right-hand column of the text agreed upon during the first reading, with the word "identity" replaced by "dignity". As a consensus had emerged on another text, his delegation would, however, be satisfied with having its position recorded in the report.

308. At its 16th meeting on 10 June, the Working Group considered a text for article 32 on the basis of article 32 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"Upon the termination of their stay in the receiving State all migrant workers and members of their families shall have the right to transfer any savings and to take with them all personal effects, working tools and other belongings."

309. The representative of the Soviet Union drew the attention to the fact that not all personal belongings could be taken abroad upon the termination of stay; in

particular certain States had adopted regulations to prevent illegal transfer of objects considered as national heritage. He suggested in that respect adding the following words to the end of the article:

"... in accordance with the applicable law of the State of employment".

310. During the consideration of the article, the representative of Italy suggested that the wording of the paragraph could be based on the provisions of article 17 of the European Convention on the Legal Status of Migrant Workers in which it was stipulated that:

"1. Each Contracting Party shall permit, according to the arrangements laid down by its legislation, the transfer of all or such parts of the earnings and savings of migrant workers as the latter may wish to transfer."

311. After some discussion and because of lack of time the Working Group decided to postpone consideration of article 32 to its next session.

Article 33

312. At its 16th meeting, on 10 June, the Working Group considered a text for article 33 on the basis of article 33 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"(1) Migrant workers and members of their families shall have the right to be informed by both the State of origin and the State of employment concerning:

"(a) Their rights arising out of the present Convention;

"(b) The conditions of admission, their rights and obligations under the law and practice of the receiving State and such other matters as will enable them to comply with administrative or other formalities in that State.

"(2) Each State Party to the present Convention shall take the appropriate measures to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, it shall co-operate with other States concerned.

"(3) The said information shall be provided to migrant workers and to members of their families, wherever possible free of charge, upon request and in their own language or in a language which they are able to understand."

313. The representative of the Federal Republic of Germany proposed rewording paragraph 2 of article 33 as follows:

"In so far as the public authorities are generally required to inform individuals and in so far as it is possible and practicable, each State ..."

314. The representative of Sweden stated that the issue of providing information to migrant workers concerning laws and regulations in other countries should not be an obligation upon the State of employment.

315. During the discussion the Chairman recalled that the lack of appropriate information facing potential migrant workers had been one of the major preoccupations in efforts to deal with problems relating to migration.

316. The representative of the Soviet Union suggested replacing the words "arising out" by the words "recognized in ..." in paragraph 1 (a).

317. The representative of Italy proposed a new wording for paragraph 1 which would also take into account the elements contained in paragraph 2 as follows:

"1. The State of origin and the State of employment shall take the necessary measures to provide appropriate information to migrant workers and members of their families in relation to

(a) ...

(b) ..."

318. In commending the proposal made by Italy, the representative of the United States suggested including the State of transit as follows: "The State of origin, the State of employment or the State of transit as the case may be ...".

319. The representative of Australia, while expressing the view that the consideration of the article required more time expressed concern at the practical problems of compliance with the broadly worded terms of the article and suggested that the approach taken by ILO Recommendation 151 would be a useful precedent.

320. The delegation of the United States suggested that to reflect the intent of this provision better, the verb "to provide" be replaced by "to make available".

321. After some discussion, the Working Group decided to postpone consideration of article 33 to its next session.

Article 34

322. At its 16th meeting on 10 June, the Working Group considered a text for article 34 on the basis of article 34 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"None of the provisions of part II of the present Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States."

323. At the same meeting the Working Group adopted article 34 on second reading as follows:

Article 34

None of the provisions of this part of the present Convention shall have the effect of relieving migrant workers and the members of their families from either the obligation to comply with the laws and regulations of any State of transit and the State of employment or the obligation to respect the cultural identity of the inhabitants of such States.

324. At its 16th meeting the Working Group considered a text for article 35 on the basis of article 35 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"Nothing in this part of the Convention shall be interpreted as [according a lawful status or any other way affecting the immigration or employment status] [implying the regularization of the situation] of a migrant worker or a member of his family who is non-documented or in an irregular situation [unlawful status] or any right to [such] [the] regularization of his situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part V."

325. At the same meeting, after a brief discussion, the Working Group adopted a text for article 35 on second reading as follows:

Article 35

Nothing in this part of the present Convention shall be interpreted as implying the regularization of the situation of a migrant worker or a member of his family who is non-documented or in an irregular situation or any right to such regularization of his situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part VI.

326. The representative of the United States stated that his Government was not yet convinced of the need for a convention on the human rights of migrant workers, and that if such a need were demonstrated, such a convention should be negotiated in ILO. He added that, in the view of his Government, the convention being negotiated in the Working Group would bind only the Parties thereto, and does not represent a codification of customary international law.

327. The Chairman pointed out that the issue raised by the representative of the United States was no longer relevant because the General Assembly, since its resolution 34/172 of 17 December 1979, in establishing the Working Group as well as in the subsequent resolutions through which the mandate of the Group had been extended, had not only decided that an international convention for the protection of the rights of all migrant workers and their families was necessary, but had established that it was an urgent matter. As to the framework in which a convention of that kind should be negotiated, the Chairman underlined that it was equally a matter which had been totally settled since, in assuming such an

endeavour itself, the General Assembly obviously had recognized that the protection of migrant workers and members of their families from the wider point of view of all human rights and fundamental freedoms was a responsibility of the United Nations since it would go beyond the much more restricted competence of ILO. Furthermore, the Chairman pointed out that, in expressing those points of view, he was clearly reflecting the feeling of the great majority of the Member States as demonstrated in the voting pattern in the General Assembly on all resolutions concerning the Working Group. Finally, with respect to the point raised by the representative of the United States, the Chairman expressed the view that the convention, the elaboration of which has been entrusted to the Working Group, would, in his opinion, be legally binding only upon States parties thereto.

328. The representative of Senegal stated that, at the level of international law, the last statement should be considered in the light of the nature of the provisions of the convention, some of which, for example, those concerning fundamental human rights, constituted a codification of customary law.

329. The representative of the Federal Republic of Germany stated that, since the statement of the representative of the United States was largely consistent with that made by his own delegation at the start of the second reading of the draft convention, he saw no reason not to associate himself with it.

330. The representative of Morocco, while associating himself with the Chairman's statement, pointed out that, although the convention was binding only upon the parties thereto, all States were obliged to observe the implementation of fundamental rights such as the right to life, the right not to be subjected to slavery or torture - principles recognized by all States that had adhered to the Universal Declaration of Human Rights, which was a morally binding international instrument.

331. The delegations of the Soviet Union, Algeria, India and Senegal expressed their support for the comments made by Morocco.

332. At its 18th meeting, on 12 June, the Working Group adopted the present report.
