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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

Suggestions submitted by Finland, Greece, Italy, Norway, Portugal,
Spain and Sweden: revised proposals for articles 2 and 4 and
part IV of the draft International Convention on the Protection
of the Rights of All Migrant Workers and Their Families

Article 2

1. The term "migrant worker" refers to any person who, in a State of which he is not a national, is to engage, is engaged or has been engaged in an economic activity for an employer or on his own account.
2. For the purpose of this Convention:
 - (a) Frontier workers shall be considered migrant workers when they engage in work in one State but retain their permanent residence in a neighbouring State to which they normally return every day;
 - (b) Seasonal workers shall be considered migrant workers when they are employed or engaged in work which, by its character, is dependent on seasonal conditions and can therefore be performed only during part of the year;
 - (c) Seafarers, including fishermen, shall be considered migrant workers when they are engaged in any function whatsoever on board a vessel other than a warship registered in a State of which they are not nationals;

- (d) Workers on a permanent offshore installation shall be considered migrant workers when the installation on which they are engaged falls under the jurisdiction of a State of which they are not nationals;
 - (e) Itinerant workers shall be considered migrant workers when, having their permanent residence in one State, they have to go for purposes of their occupation to another State for a short period.
3. The term "migrant worker" excludes:
- (a) Persons employed by international organizations and agencies and persons employed by a State outside its territory whose admission and status are regulated by general international law or by specific international agreements or conventions;
 - (b) Persons employed on behalf of a State outside its territory for the execution of programmes of co-operation for development agreed with the receiving State and whose admission and status are regulated by specific international agreements or conventions.

Article 4

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

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

Part IV - Provisions applicable to particular categories of migrant workers and members of their families

- IV. 1. The particular categories of migrant workers and members of their families specified below who are in a regular situation as regards their admission, stay and employment or other economic activity, shall enjoy the rights referred to in part IV.

Frontier workers

- IV. 2. (1) Frontier workers, as defined in article 2 (2) (a), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment, excluding rights relating to or arising out of residence and rights arising out of article 44.

- (2) The preceding paragraph shall be subject to any contrary provisions in agreements for the time being in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned.
- (3) Frontier workers shall have the right freely to choose their employment or other economic activity subject to article 51. This right shall not affect their status as frontier workers.

Seasonal workers

- IV. 3. (1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment.
- (2) A seasonal worker who, not counting seasonal interruptions, has been lawfully employed or working in the State of employment for an aggregate period of 24 months shall be entitled to take up other employment or economic activity, subject to any conditions or limitations imposed in accordance with article 51.

Seafarers and workers on permanent offshore installations

- IV. 4. (1) Seafarers, as defined in article 2 (2) (c), workers on permanent offshore installations, as defined in article 2 (2) (d), and members of their families shall enjoy the following rights:
 - (a) If the said workers have been authorized to take up residence in the State of employment, they and the members of their families shall be entitled to the rights provided for in parts II and III of this Convention;
 - (b) If the said workers have not been authorized to take up residence in the State of employment, they shall be entitled to all of the abovementioned rights which can be applied to them by reason of their presence or work in the State of employment, excluding rights relating to or arising out of residence and rights arising out of article 44.
- (2) The preceding paragraph shall be subject to any contrary provisions in agreements for the time being in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned.
- (3) For the purpose of this article, the State of employment means the State under whose flag or jurisdiction is operated the ship or installation on which the migrant worker is engaged.

Itinerant workers

- IV. 5. Itinerant workers, as defined in article 2 (2) (e), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence in the territory of the State of employment excluding rights relating to or arising out of residence or employment and rights arising out of article 44.
