



General Assembly

Distr.
GENERAL

A/C.3/39/1
14 June 1984

ORIGINAL: ENGLISH

Thirty-ninth session
THIRD COMMITTEE
Working Group I
Agenda item 12

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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Report of the Open-ended Working Group on the Elaboration of an International Convention on the Protection of the Rights Of All Migrant Workers and Their Families

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

INTRODUCTION

1. The Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families, open to all Member States, was established under General Assembly resolution 34/172 of 17 December 1979.
2. By its resolution 1984/41 of 24 May 1984, the Economic and Social Council, inter alia, welcomed the progress made by the Working Group and expressed the hope that substantial progress would be made by the Working Group during its two subsequent meetings to be held in 1984, in accordance with General Assembly resolution 38/86 of 16 December 1983.
3. By its resolution 38/86 of 16 December 1983, the General Assembly, inter alia, took note of the previous reports 1/ of the Working Group and expressed its satisfaction with the substantial progress that the Working Group, during its inter-sessional meetings in May 1982 and its meetings during the thirty-seventh session of the General Assembly, had so far made in the accomplishment of its mandate; decided that, in order to enable it to complete its task as soon as possible, the Working Group should again hold an inter-sessional meeting of two weeks' duration in New York, immediately after the first regular session of 1983 of the Economic and Social Council; and invited the Secretary-General to transmit to Governments the report of the Working Group so as to allow the members of the Group to continue their task during the inter-sessional meeting to be held

in the spring of 1984, as well as to transmit the results obtained at that meeting so that the General Assembly might consider them during its thirty-ninth session. The General Assembly also invited the Secretary-General to transmit the above-mentioned documents to the competent organs of the United Nations system and to international organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group. It also decided that the Working Group should meet during the thirty-ninth session of the General Assembly, preferably at the beginning of the session, to continue and, if possible, to complete the elaboration of an international convention on the protection of the rights of all migrant workers and their families.

4. In accordance with paragraphs 3 and 4 of General Assembly resolution 37/170, the Secretary-General has transmitted the results obtained during the spring session of 1983 and the thirty-eighth session of the General Assembly to Governments, competent organizations of the United Nations system and international organizations concerned.

5. Before its fourth inter-sessional meeting of 1984, the Working Group held the following sessions at United Nations Headquarters: (a) the first session during the thirty-fifth session of the General Assembly, from 8 October to 19 November 1980; (b) a first inter-sessional meeting from 11 to 22 May 1981; (c) a second session during the thirty-sixth session of the General Assembly from 12 October to 20 November 1981; (d) a second inter-sessional meeting from 10 to 21 May 1982; (e) a third session during the thirty-seventh session of the General Assembly from 18 October to 16 November 1982; (f) a third inter-sessional meeting from 31 May to 10 June 1983; a fourth session during the thirty-eighth session of the General Assembly from 27 September to 6 October 1983.

6. In pursuance of General Assembly resolution 38/86, the Working Group met at United Nations Headquarters from 29 May to 8 June 1984 under the chairmanship of Mr. Antonio González de León. It held 15 meetings with the participation of delegations from all regions. Observers for the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization of the United Nations, the United Nations Conference on Trade and Development and the Economic Commission for Africa also attended the meetings.

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

(a) Report of the Open-ended Working Group during the thirty-eighth session of the General Assembly (A/C.3/38/5);

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

(c) Texts of the preamble and articles of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families to which the Working Group provisionally agreed during the first reading in previous sessions (A/C.3/39/WG.1/CRP.1);

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(d) Compilation of proposals made by members of the Working Group (A/C.3/36/WG.1/WP.1);

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

(f) Suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden relating to proposals presented in document A/C.3/35/WG.1/CRP.15 and Corr.1 and 2 concerning parts VII and III of the Convention;

(g) Further suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden relating to proposals presented in part VI of the draft International Convention appended to the report of the Working Group (A/C.3/38/5).

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

(a) Report of the Chairman of the Open-ended Working Group (A/C.3/35/13);

(b) Letter dated 25 May 1981 from the Chairman of the Open-ended Working Group on the drafting of an international convention on the protection of the rights of all migrant workers and their families to the Secretary-General (A/36/378 and annexes I to XIX);

(c) Communications submitted by the Governments of Denmark (on behalf of the Nordic countries), Italy, the Netherlands, Spain and the United States, relating to the draft report of the Chairman of the Working Group on its inter-sessional meetings (A/36/383);

(d) Further suggestions submitted by Finland, Norway, Portugal, Spain and Sweden for parts III, IV and V of the Convention (A/C.3/36/WG.1/CRP.1/Add.3 and 4);

(e) Report of the Open-ended Working Group to the Third Committee of the General Assembly at its thirty-sixth session (A/C.3/36/10);

(f) Report of the Open-ended Working Group on its inter-sessional meeting from 10 to 21 May 1982 (A/C.3/37/1);

(g) Report of the Open-ended Working Group during the thirty-seventh session of the General Assembly [A/C.3/37/7 and Corr.1 and 2 (English only)].

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

9. The present report contains exclusively results of discussion in the Working Group during its inter-sessional meeting from 29 May to 8 June 1984 regarding specific provisions of the Convention and does not contain statements of a general

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nature made during the debates. In the texts set forth throughout this report which were considered by the Working Group, only the language which has been provisionally agreed upon* at first reading is that outside square brackets. Square brackets indicate that the Working Group has not reached provisional agreement on the proposed language, which therefore remains only a proposal.

10. It may be recalled that, at its meetings held during the thirty-sixth session of the General Assembly, the Working Group had concluded its first reading of the preamble of the draft Convention. At its inter-sessional meeting in May 1982, the Working Group concluded its first reading of part II of the draft Convention on the understanding that the text which was provisionally agreed upon would be further examined at a later stage in order to harmonize it with the rest of the Convention and to adopt a text without brackets. At the same session the Working Group also concluded its preliminary consideration of part I of the Convention and agreed to postpone further consideration of articles 2 and 4, which were still pending, to a later stage. At its spring inter-sessional meeting of 1983, the Working Group concluded consideration of part III with the exception of article 55 which the Group agreed to take up together with part IV dealing with particular categories of migrant workers and members of their families, which the Group decided to consider at a later stage. During the thirty-eighth session of the General Assembly, the Group concluded part V on the promotion of sound, equitable and humane conditions in connection with lawful international migration of workers and their families and part VII on general provisions. The text of the preamble, part I on the scope and definitions (arts. 1, 3, 5, 6), part II on fundamental human rights of migrant workers and members of their families, part III on additional rights of all migrant workers and members of their families in a regular situation (arts. 35-54 and art. 56), part V (arts. 62 to 68) and part VII appeared in document A/C.3/39/WG.1/CRP.1.

11. During the spring 1984 session, the Working Group had agreed to complete its first reading of the draft Convention by concluding consideration of part VIII on final provisions, part VI on the application of the Convention as well as the pending articles relating to the scope and definitions, namely articles 2, 4, 55 and 85 as well as part IV on particular categories of migrant workers.

PART VIII. FINAL PROVISIONS

12. The Working Group first considered part VIII on the basis of suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden contained in document A/C.3/38/WG.1/CRP.6. In this connection, the Chairman of the Working Group drew the attention of the Group to some proposals relating to the final clauses submitted by Algeria, Barbados, Egypt, Mexico, Pakistan, Turkey and Yugoslavia, which were reproduced in column A of document A/C.3/36/WG.1/WP.1.

* Provisionally agreed upon means that the text is subject to further review.

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13. In introducing the proposals included in A/C.3/38/WG.1/CRP.6, the representative of Italy pointed out that there were certain questions which needed to be examined carefully, such as the States to which the Convention should be opened for signature and accession; the question of its entry into force; the implementation of the Convention to federal States and its extension to other territories as well as its limitations; the question of denunciation; the mechanism for amendment or revision and the function of the Secretary-General as depositary of the Convention.

Article 81

14. At its first, second and third meetings on 29 and 30 May, the Working Group considered a text for article 81 on the basis of part VIII-1, reading as follows:

"1. This Convention shall be open for signature by ... It is subject to ratification, acceptance or approval.

"2. This Convention shall be open to accession by any State referred to in paragraph 1 of this article.

"3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations."

15. In this connection, consideration was given to the proposal on final clauses submitted by Algeria, Barbados, Egypt, Mexico, Pakistan, Turkey and Yugoslavia and reproduced in column A of document A/C.3/36/WG.1/WP.1, reads as follows:

"(1) This Convention shall be open for signature, ratification and accession by all States and shall be applicable, in all its terms, in all territories under the jurisdiction of States which become Parties thereto."

16. During the discussion of article 81, the representative of the USSR, supported by the delegations of India and Chile, stressed that the Convention as an international instrument should be opened to all States as set out in the proposal reproduced in column A of document A/C.3/36/WG.1/WP.1. The representative of France, supported by the representative of the Federal Republic of Germany, stated that some priority should be accorded to States directly concerned with the question of migration, in particular, with respect to the supervision of the Convention, so as to avoid the supervisory machinery of the Convention being controlled by experts nominated by States which did not have migrant workers.

17. In this connection, the Chairman expressed the view that the dynamic nature of migration should be borne in mind, since States which at present were not involved in the question of migration for employment might be concerned with it in the future, and *vice versa*. The question of representation of States of origin and States of employment could adequately be considered in the context of the supervisory machinery for the application of the Convention.

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18. In view of the fact that there was no opposition to the Convention being opened to all States, the Working Group decided, at its third meeting on 30 May, after informal consultations, to agree provisionally at first reading on the following text for article 81:

Article 81

1. The present Convention shall be open for signature by all States. It is subject to ratification, acceptance or approval.
2. The present Convention shall be open to accession by any State referred to in paragraph 1 of this article.
3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article 82

19. At its first meeting on 29 May, the Working Group considered a text for article 82 on the basis of article VIII-2, reading as follows:

"1. This Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the fifteenth instrument of ratification, acceptance, approval or accession.

"2. For each State ratifying this Convention or acceding to it after the deposit of the fifteenth instrument of ratification, acceptance, approval or accession, it shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification, acceptance, approval or accession."

20. In reply to certain questions raised by the representative of the Byelorussian SSR on the period of three months, the required 15 ratifications and the meaning of the terms "acceptance" and "approval" in the text of proposed article VIII.2, the co-sponsors of that text stated that in their view it was necessary to have a required minimum of 15 ratifications or accessions before the entry into force of the Convention since the purpose of the Convention was to lay down standards which commanded wide acceptance among ratifying States. They added that the terms "acceptance" and "approval" had been utilized because they were used in the Vienna Convention on the Law of Treaties and, in practice, terminology varied in different States. Regarding the phrase "... the first day of the month following a period of three months ..." the co-sponsors had offered it for the sake of precision. The representative of Morocco suggested that it would be sufficient to state in that article that the Convention would enter into force on the ninetieth day after the deposit of the required number of ratifications or accessions. The representatives of Italy and the Federal Republic of Germany called the attention of the Group to the need to relate the number of ratifications required for the entry into force of the Convention to the number of members of the supervisory committee nominated by States contemplated in article 69.

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21. At the same meeting the Working Group provisionally agreed at first reading on the following text for article 82:

Article 82

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the fifteenth instrument of ratification, acceptance, approval or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the fifteenth instrument of ratification, acceptance, approval or accession, it shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification, acceptance, approval or accession.

Articles 83 and 84

22. At its 1st meeting on 29 May, the Working Group considered a text for article 83 on the basis of proposed article VIII.3 reading as follows:

"1. The provisions of this Convention shall extend to all parts of federal States without any limitations or exceptions.

"2. Any State may, at the time of signature, ratification, acceptance, approval or accession or at any other date, declare that the Convention shall extend to all territories for the international relations of which it is responsible, or to one or more of them. Such declaration shall take effect at the time the Convention enters into force for the State or, if made subsequently, on the first day of the month following the expiration of a period of three months after the date of the receipt of such declaration by the Secretary-General of the United Nations. Such declarations, as well as any subsequent extension and their withdrawal, shall be notified to the Secretary-General of the United Nations."

23. For the consideration of this article, the attention of the Working Group was also drawn to the earlier proposal on the final clauses submitted by Algeria, Barbados, Egypt, Mexico, Pakistan, Turkey and Yugoslavia contained in column A of document A/C.3/36/WG.1/WP.1 reading as follows:

"(1) This Convention ... shall be applicable, in all its terms, in all territories under the jurisdiction of States which become Parties thereto.

"(2) The provisions of this Convention shall be applicable in all States Parties at both the national and the local levels. Each State Party therefore undertakes to adopt the necessary measures to facilitate such application, according to its particular structures and in accordance with the relevant internal procedures."

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24. The representative of the USSR expressed his difficulty with the proposed text of article VIII.3. He voiced his concern over the juridical technical obligations laid down in paragraph 2. The representative of the United States explained her difficulty in accepting proposed paragraph 1 and suggested that it should be reformulated to reflect the concern of States with a federal system. The representative of the Netherlands, referring to the Charter of the Kingdom of the Netherlands regarding accession to international treaties, stated that he welcomed the provisions of the first sentence of paragraph 2. The representative of Italy stressed the ideas embodied in paragraph 1 which were included in the provisions of the article in order to avoid the exclusion of any constituent part of a federal system from the application of the Convention. The representative of Morocco suggested that the formulation of the article should be based on the wording of article 28 of the International Covenant on Economic, Social and Cultural Rights or on article 50 of the International Covenant on Civil and Political Rights which referred to the application of the Covenant without any limitations or exceptions.

25. At the same meeting, upon the proposal of the Chairman, the Working Group agreed to hold further consultations on the proposed text with a view to elaborating a text which could be acceptable to all. The extensive consultations which took place in the following days did not produce a formulation which could satisfy all delegations. However, at its 11th meeting on 5 June, the Group provisionally agreed to approve at first reading, as article 83, the following text:

Article 83

1. Where a State Party is constituted as a federal State, the national Government of such State Party shall implement all the provisions of the present Convention over whose subject matter it exercises jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national Government shall immediately take suitable and effective measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units adopt appropriate measures for the fulfilment of the present Convention.

26. Further, the Group decided, at the same meeting, to retain in the text two options for a new article 84 to be considered at the second reading. In that regard, the representative of the Netherlands stated that the text proposed as a second option would cause serious problems for the Kingdom of the Netherlands. The texts are as follows:

Article 84

[Any State Party may, at the time of signature, ratification, acceptance, approval or accession, or at any other date, declare that the present Convention shall extend to all territories of the international relations for which it is responsible, or to one or more of them. Such declaration shall take effect at the time the present Convention enters into force for the State or, if made subsequently, on the first day of the month following the expiration of a period of three months after the date of the receipt of such declaration by the Secretary-General of the United Nations. Such declarations, as well as any subsequent extension and their withdrawal, shall be notified to the Secretary-General of the United Nations.]

[The present Convention shall be applicable, in all its terms, in all territories under the effective jurisdiction of States which become Parties thereto. Its provisions should apply at both the national and the local levels and each therefore undertakes to adopt the necessary and effective measures to facilitate such application according to its particular structures and in accordance with its relevant internal procedures.]

Article 85

27. The Working Group considered a text for article 85 on the basis of proposed article VIII.4 reading as follows:

"At the time of signature, ratification, acceptance, approval or accession, any State may declare that it shall apply articles 51, 52, 53, 54 and 55 of the present Convention only in relation to nationals of other States Parties."

28. After a brief exchange of views on that proposed text and in view of the complex nature of the question of reciprocity involved in the proposed article and the reference made to matters such as article 55, on which the Working Group had not yet reached an agreement, the Working Group decided at its 2nd meeting to leave the proposed text for article 85 pending until its next session, noting that careful consideration should be given to it in the light of whatever agreement was finally reached on articles 51 to 55.

Article 86

29. At its 2nd meeting on 29 May, the Working Group considered a text for article 86 on the basis of proposed article VIII.5 reading as follows:

"1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of notification addressed to the Secretary-General of the United Nations.

"2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of the receipt of the notification by the Secretary-General."

30. The representative of India asked for clarification as to what would be the effect of the proposal for a State which became a Party after the Convention had come into force in relation to denunciation of the Convention. In clarifying the matter, the representative of Italy said that the delay of five years would apply as of the entry into force of the Convention for the State concerned.

31. The Working Group provisionally agreed, at first reading on a text for article 86 reading as follows:

Article 86

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of the receipt of the notification by the Secretary-General.

Article 87

32. At its 2nd meeting on 29 May, the Working Group considered a text for article 87 on the basis of proposed article VIII.6 reading as follows:

"1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the State Parties to the present Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by two thirds of the State Parties shall be submitted to all States Parties for approval.

"2. Amendments shall come into force when they have been accepted by two thirds of the States Parties to the present Convention in accordance with their respective constitutional processes. Such acceptance shall be communicated by the States Parties to the Secretary-General of the United Nations who shall notify all States Parties of such communications and, when the amendment has entered into force, of what States Parties are bound by it.

"3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment

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which they have accepted. When amendments have come into force, the Convention shall be open for signature and subject to ratification, acceptance or approval only in its amended form."

33. With reference to the text submitted by the co-sponsors, the representative of Italy pointed out some complexities in relation to the revision of multilateral treaties. He stated that the proposal before the Group was essentially based on the possibility of negotiation between the Parties on the occasion of a conference which could be convened by the Secretary-General. He stressed that, in the proposal, any amendment adopted by two thirds of States Parties would be proposed to all States Parties for approval and that any amendment, once accepted, would become binding on those States which accepted it.

34. In reply to comments made by the representative of Yugoslavia, the representative of Italy emphasized that there was a need to introduce limitations on the amendments to be introduced to the Convention once adopted. Some delegations expressed their concern over the possibility of having a variety of amendments which would be binding on some States and not on others.

35. The representative of Argentina suggested that the text of the first sentence of the article should be modified so that no revision of the Convention could be made before five years after the entry into force of the Convention. Turning to the second paragraph, he proposed to reverse the order of the two sentences. His proposal, which was accepted by the co-sponsors of the proposed article, read as follows:

"2. Such acceptance shall be communicated by the States Parties to the Secretary-General of the United Nations who shall notify all Parties of such communications and, when the amendment has entered into force, of what States Parties are bound by it. Amendments shall come into force when they have been accepted by two thirds of the States Parties to the present Convention in accordance with their respective constitutional process."

36. The representative of Morocco expressed the view that the provisions of that article should be worded on the basis of article 23 of the International Convention on the Elimination of All Forms of Racial Discrimination. She emphasized that, since the General Assembly was the organ which would ultimately adopt a Convention, it would be logical that any amendment or revision of the Convention should be decided upon by the General Assembly as stipulated in article 23 of the International Convention on the Elimination of All Forms of Racial Discrimination and that the General Assembly should decide upon the steps to be taken in respect of a request for a revision of the Convention.

37. At its 2nd meeting, the Working Group provisionally agreed on a text for article 87 reading as follows:

Article 87

1. At any time after five years from the entry into force of the Convention a request for the revision of the present Convention may be made at

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any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the State Parties to the present Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by two thirds of the State Parties shall be submitted to all States Parties for approval.

2. Approval of amendments shall be communicated by the States Parties to the Secretary-General of the United Nations who shall notify all Parties of such communications and, when the amendment has entered into force, of which States Parties are bound by it. Amendments shall come into force when they have been accepted by two thirds of the States Parties to the present Convention in accordance with their respective constitutional process.

38. At the same meeting, reference was made by the Chairman and various delegations to the need to include in the Convention a clause relating to disputes concerning the interpretation or application of the Convention.

39. In expressing her agreement to the inclusion of such a clause, the representative of Morocco proposed to take as a base article 22 of the Convention on the Elimination of All Forms of Racial Discrimination. In commenting on that proposal the representatives of Algeria and the Byelorussian SSR amended it in order to subject the effect of that clause to the mutual agreement of the States Parties concerned. The proposal would read as follows:

"Any dispute between two or more States Parties with respect to the interpretation or application of the present Convention, which is not settled by negotiation or by the procedures expressly provided for in the present Convention, shall, at the request of any of the parties to the dispute and with the mutual agreement of the Parties concerned, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

40. The representative of Finland, supported by the representatives of India and Italy, felt that it might be useful to have such a clause in the Convention, but suggested that it would be more appropriate to include it in part VI of the Convention. At the same meeting, the Working Group decided to defer consideration of a clause on disputes between two or more States with respect to the application or interpretation of the Convention until the Group reached part VI of the draft Convention.

Article 88

41. At its 2nd meeting on 29 May, the Working Group considered a text for article 88 on the basis of the proposed article VIII.7 reading as follows:

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"The Secretary-General of the United Nations shall notify all States which have signed, ratified, accepted or approved the present Convention or acceded thereto of the following:

"1. Any signature;

"2. The deposit of any instrument of ratification, acceptance, approval or accession;

"3. Any date of entry into force of the present Convention in accordance with article VIII-2;

"4. Any other act, notification or communication relating to the present Convention."

42. On the basis of such formulation, at the same meeting the Working Group provisionally agreed at first reading on the following text for article 88:

Article 88

The Secretary-General of the United Nations shall notify all States which have signed, ratified, accepted or approved the present Convention or acceded thereto of the following:

(a) Any signature;

(b) The deposit of any instrument of ratification, acceptance, approval or accession;

(c) Any date of entry into force of the present Convention in accordance with article 82;

(d) Any other act, notification or communication relating to the present Convention.

Article 89

43. At its second meeting on 29 May, the Working Group considered a text for article 89 on the basis of proposed article VIII.8 reading as follows:

"1. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

"2. The Secretary-General shall transmit certified copies of the present Convention to all the States referred to in article VIII-1."

44. On that basis, at the same meeting, the Working Group provisionally agreed at first reading on a text for article 89 reading as follows:

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Article 89

1. The original of the present Convention, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General shall transmit certified copies of the present Convention to all the States referred to in article 81.

PART VI. APPLICATION OF THE CONVENTION

45. The Working Group began consideration of part VI on the basis of the proposals made by the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden in the appendix to document A/C.3/38/5. The co-sponsors of the proposal foresaw, firstly, the examination of States Parties reports, secondly, a complaint and conciliation procedure and, thirdly, a supervisory body composed of 18 members, 12 of whom would be elected by States Parties while 6 would be appointed by the Governing Body of the International Labour Office. The representative of Sweden, on behalf of the co-sponsoring delegations, introduced the proposals and elaborated on the reflections concerning supervision of the application of the Convention contained in the working paper submitted in October 1983. The delegations of Italy and Finland further explained the aims of the proposals and emphasized that the members of the supervisory body needed to be both expert and independent. For those and other reasons the involvement of ILO was necessary and important. At the suggestion of the representative of Sweden the Chairman invited the observer of ILO to summarize the views expressed on the proposed involvement of ILO at the February-March session of the Governing Body of the International Labour Office and his statement was subsequently made available to participants of the Working Group.

46. The Working Group agreed to have first a general exchange of views on what was needed in terms of the scope and characteristics of the machinery for the supervision of the application of the Convention. In this sense, all delegations agreed that there was indeed a need to allow for an appropriate monitoring system, which necessarily implied the functioning of an efficient organ that would take care of reporting on the degree and modalities of application. Some delegations emphasized the necessity to foresee some kind of intervention of such an organ with respect to controversies or disputes which might emerge in the future concerning the interpretation and application of the Convention.

47. In this respect the positions of delegations varied widely. There were some delegations which insisted on using already existing organs as supervisory bodies for the application of the present Convention, such as the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, or the supervisory machinery within the International Labour Organisation. Other delegations expressed a specific preference for entrusting the whole administration of the Convention to the Committee of Experts on the Application of Conventions and Recommendations of the ILO.

48. Most delegations, however, supported the idea of establishing an ad hoc committee of experts for the supervision of the application of the Convention, as suggested in the proposals made by a group of Mediterranean and Scandinavian countries contained in document A/C.3/38/5, although with different views on the characteristics of such a committee. Among them, some delegations proposed that no role be attributed at all to ILO in the supervisory system. However, many delegations supported the idea of recognizing the experience of ILO by allowing some kind of advisory function to that agency. The co-sponsors of proposals under consideration, supported by other delegations, expressed the view that the wide experience and the recognized competence of ILO justified the participation of that organization in the supervisory body, by means of allowing the Governing Body to appoint a certain number of members of the Committee.

49. Other delegations, while recognizing the experience of ILO in various areas to be covered by the United Nations Convention on the Protection of the Rights of All Migrant Workers and Their Families, objected in general to the idea of allowing ILO to intervene directly in the functioning of the supervisory body and specifically to the proposal to delegate to the Governing Body of the International Labour Office the appointment of members of the Committee. The debate on that question was comprehensive, with the co-sponsors of that proposal and other delegations mainly invoking the reasoning offered by the co-sponsors in support of their proposals (annex to document A/C.3/38/5), while other delegations argued a variety of reasons against.

50. In essence, the basic arguments against the participation of the Governing Body of the International Labour Office in the appointment of a number of experts of the Committee were the following: (a) many areas to be covered by the United Nations Convention would considerably exceed the field of competence of ILO, since the United Nations convention would dwell, sometimes extensively, in areas beyond questions such as labour conditions, labour relations or social security matters and would deal with a wider range of human rights and fundamental freedoms than that covered by ILO in its conventions and recommendations, as well as with questions related to migration in general, law enforcement, judicial matters, different aspects of cultural identity problems and cultural rights, etc; (b) participation of ILO in the appointment of experts would place that agency in a privileged position vis-à-vis States Parties to the Convention, since States Parties could appoint only one expert each and ILO, according to the proposals, would have the right to appoint several and according to criteria which were not necessarily valid in the context of the United Nations; (c) the participation of ILO, as envisaged in the proposals, would not only place that organization above States Parties to the Convention, but would be a departure from established practice, in the sense that only United Nations organs could supervise the application of United Nations instruments; (d) a further departure, and definitely a more serious one, would be allowing the participation in the supervision of the application of a Convention of persons coming from States which might not be Parties to that Convention, a practice which had been followed in ILO, but not in the United Nations.

51. Besides the arguments summarized above, some delegations stated that there was no reason for allowing a technical organization, such as ILO, to deal with all aspects of the Convention. Others invoked as a fact that ILO had not dealt sufficiently until now, for example, with all questions and problems relating to labour migrations, and in particular with those posed by the existence in many parts of the world, tolerated or not, of undocumented workers or migrant workers in an irregular situation.

52. The debate also centred on the nature of the supervisory body to be established, as well as in the character of its members. Concerning the latter aspect, there was no objection to the need to designate persons of high qualifications, though there were discrepancies as to the degree of independence that such experts might possess in practice. Opposing the idea of integrating the Committee with totally independent persons, a number of delegations supported a Committee composed of government experts, since it would be Governments that would be responsible for the appropriate application of the Convention.

53. With respect to the nature of the supervisory body, two elements were the subject of discussion. On the one hand, the question of whether the Committee should merely have a monitoring function through a given system of information, or whether it should also be allowed to act in a more assertive capacity, in particular, with respect to the settlement of disputes concerning the interpretation and/or application of the Convention. Many delegations, while accepting the monitoring role of the Committee, strongly opposed any compulsory action of the Committee in the settlement of disputes. Some even objected to the provision of systematic action by the Committee in the way of interposing good offices in cases of disputes which were not settled quickly. Those delegations offered, as an alternative, to establish the principle of mutual agreement of Parties involved in a dispute as a pre-condition for the exercise of good offices by the Committee.

54. In that respect, several possibilities or combinations thereof were explored. Still, the Group could not agree on a single formulation since many delegations accepted the notion of making compulsory at least the first stage of the process, that is, the exchange of information on issues which might be subject to controversy, while accepting that the process of good offices should be subject to the previous acceptance of States Parties involved.

55. In particular, the delegations of Greece (on behalf of the co-sponsors), Canada, Denmark, the Federal Republic of Germany, the Netherlands and the United States stated that the vast experience of ILO and the capacity of its experts, as well as the efficiency of its different procedures, were valuable elements which could be an important contribution in the monitoring and implementation of the Convention. The representative of France pointed out that the role ILO could play could be of great value, and that care should be taken in the future operation not to duplicate or contradict the work of other existing organs in the field of human rights such as the Commission on Human Rights or the Human Rights Committee.

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56. The representatives of Morocco, Algeria, Tunisia and India voiced their concern over the proposed composition of the Committee. They stressed that, in the designation of the members of a Committee, the experts designated by ILO would not be put on an equal footing with States Parties. They emphasized that they could allow for ILO performing an advisory role in the supervision of the United Nations Convention, while recognizing that the same role could be envisaged with respect to other specialized agencies such as UNESCO or the World Health Organization, which had played a significant role regarding the international protection of migrant workers. The representative of Yugoslavia expressed the opinion that the proposal to include the experts of ILO in the Committee represented a new idea in the practice of the United Nations and therefore required more time for careful study. Like some other delegations, he also pointed out that besides ILO there were other specialized agencies which could be interested in playing a role in connection with the implementation of the Convention.

57. The representatives of the Byelorussian SSR, the Ukrainian SSR and the USSR expressed the view that the machinery proposed for supervising the application of the Convention should be conceived on terms analogous to those which characterize other mechanisms for the supervision of widely accepted instruments for the protection of human rights within the United Nations system.

58. The delegation of Argentina expressed the view that the nature of the supervisory machinery should be studied carefully and that the one proposed in the appendix of document A/C.3/38/5 was only one of the possible alternatives, which might, *inter alia*, include the use of existing bodies of the United Nations system to carry out that task. The delegation of Argentina reserved its right to review that question at a later session of the Working Group and indicated that its participation in the debate on part VI would be subject to the final position adopted by its Government on the matter.

59. The representative of the Netherlands stated that, in view of the still pending articles on definitions and scope of the Convention, it would be necessary to review or even make new proposals on part VI at the second reading.

60. In that connection the representative of the United States stated that her delegation considered the International Labour Organisation Committee of Experts to be the appropriate body to administer the Convention. She said that, without prejudice to that position, the United States delegation would comment on the proposal for the establishment of a Committee in document A/C.3/38/5. In that regard, she expressed her Government's concern over certain provisions of that proposal which would give rise to financial implications for the United Nations. She stressed that it was the view of the United States that all costs incurred pursuant to part VI of the Convention should be borne by the States Parties, and therefore the United States acceptance of paragraphs having financial implications would be predicated on adoption of the United States proposal concerning costs.

61. At the request of some delegations, the ILO observer gave a brief description of procedures utilized in the framework of that agency, in particular, the working of the Committee of Experts on the Application of Conventions and Recommendations. In the same vein, the observer of UNESCO briefly described the procedures followed in that agency with respect to areas of its own competence.

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62. The proposals for part VI of the Convention which appeared in the appendix to the last report of the Working Group (A/C.3/38/5) were then taken up one by one by the Group. The reasoning behind these proposals is reproduced in that appendix.

Article 69

63. From its 3rd to 11th meetings, from 30 May to 5 June, the Working Group considered the whole of the proposals submitted for part VI. The proposal for the first article read as follows:

"VI.1 Application of the Convention

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

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

"(b) The remaining six members shall be appointed by the Governing Body of the International Labour Office;

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

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

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

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

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

"7. If an expert has ceased to function as a member of the Committee before the expiry of his term, the State Party which nominated the expert, or the Governing Body of the International Labour Office which appointed the expert, shall appoint another expert for the remaining part of the term. In cases where the new expert is appointed by the State Party, the appointment is subject to the approval of the Committee.

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

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

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

64. During the consideration of this proposed article, the representative of the Federal Republic of Germany, supported by the United States delegation, suggested that the words "for the purpose of reviewing the application of the present Convention" were not necessary in the first paragraph. He consequently suggested adding at the end of the sentence, after the word "Convention" the words "and shall carry out the functions hereinafter provided for". He also proposed adding the words "high moral standing and recognized" after the words "18 experts of" in the same paragraph. The representative of Morocco proposed adding the word "impartiality" after the word "standing" in that proposal.

65. The representative of India suggested rewording paragraph 2 as follows:

"2. The members of the Committee shall be elected by the States Parties nominated by them from a list submitted by them in accordance with the principle of equitable distribution ensuring, however, that the composition of the Committee shall be equally distributed between the States of origin and States of employment, taking into consideration the statistics on international migration available during the immediately preceding five years."

66. The delegation of the Byelorussian SSR expressed doubts as regards the inclusion of the principle of special interests in the context of the principle of equitable geographical distribution.

67. The representative of Finland, supported by several delegations, voiced concern about the possibility of defining the States of origin and the States of employment in an objective way on the basis of available statistics.

68. Several delegations proposed that all references in paragraphs 2, 5, 6 and 7 concerning the participation of ILO in the appointment of experts be deleted.

69. The representative of the Federal Republic of Germany proposed to include at the end of subparagraph (a) of paragraph 2 the words "these persons shall be nationals of the nominating State". The delegation of Finland expressed its reservation on the proposal made by the Federal Republic of Germany. The delegation of Algeria proposed to insert at the end of the third paragraph the words "together with the curricula vitae of the persons thus nominated".

70. At the suggestion of the Chairman, the words "in the first election" were inserted in the sixth paragraph before the words "shall expire at the end of two years". Changes were made in the order of the paragraphs - paragraph 10 was renumbered as 8, paragraph 8 was renumbered as 9 and paragraph 9 was renumbered as 10.

71. The representative of the United States, supported in principle by the delegation of Canada and the Federal Republic of Germany, proposed a new text for old paragraph 8 (new 9) reading as follows:

"The States Parties shall be responsible for all expenses incurred in connection with the administration of the present Convention pursuant to part VI and shall reimburse the United Nations for all costs of meetings, staff, facilities and emoluments."

72. The above proposal by the representative of the United States, if accepted, would entail as well the deletion of paragraph 10 (new 8).

73. After further and lengthy consultations, some accommodation was reached, although it did not prove to be possible at that stage to conciliate the views concerning the role that ILO should play in the supervision of the application of the Convention.

74. In those circumstances, the delegations of Algeria, Mexico and Morocco, stating the desire to break the impasse at the level of the first reading, and with the intention of reflecting the main concerns expressed by different delegations, proposed to delete or at least place in square brackets subparagraph (b) of paragraph 2 of that article; to delete or place in square brackets the word "all" in subparagraph (c) of the same paragraph; to delete entirely paragraph 5; to replace in paragraph 6 the word "six" with "nine" and to delete the words "and three of the appointed members" in the same paragraph; finally, to delete in the first sentence of paragraph 7 the words "or the Governing Body of the International Labour Office which appointed the expert" and to delete in the second sentence the words "in cases where the new expert is appointed by the State Party".

75. These delegations felt that in that manner the Working Group would have the option, at the second reading, to maintain most of the text of the proposals for the article, even if deciding that the Governing Body of ILO would not participate in the appointment of members of the Committee. They explained and further submitted a possible new text of paragraph 2 of what would become article 72 where ILO would be invited to participate in the work of the Committee in an advisory capacity (see para. 94 below).

76. In view of the foregoing, and since the proposals suggested in paragraphs 74-75 are reflected in brackets in paragraphs 2 (a) and (b), 5 and 7 of the article, the Group decided to provisionally agree on the following text for article 69 for further consideration at the second reading:

Article 69

1. [For the purpose of reviewing the application of the present Convention] there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Their Families (hereinafter referred to as "the Committee") consisting of [eighteen] experts of high moral standing, impartiality and recognized competence in the field covered by the Convention. [The Committee shall carry out the functions hereinafter provided for.]

2. (a) [Twelve] members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person; [These persons shall be nationals of the nominating State;]

[(b) The remaining six members shall be appointed by the Governing Body of the International Labour Office;]

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

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

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

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

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

7. If an expert has ceased to function as a member of the Committee before the expiry of his term, the State Party which nominated the expert [or the Governing Body of the International Labour Office which appointed the expert,] shall appoint another expert for the remaining part of the term. [In cases where the new expert is appointed by the State Party], the appointment is subject to the approval of the Committee.

[8. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.]

[8. The States Parties shall be responsible for all expenses incurred in connection with the administration of the present Convention pursuant to part VI and shall reimburse the United Nations for all costs of meetings, staff, facilities and emoluments.]

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

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

Article 70

77. For the discussion of this article, the Group considered the proposal for part VI.2 reading as follows:

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

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

"(b) Thereafter every four years.

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

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78. Some delegations proposed to include the words "and shall provide information on the characteristics of migration flows in which States Parties to the present Convention are involved" at the end of paragraph 2. In that context, the representative of the Federal Republic of Germany drew the attention of the Working Group to United Nations documents which showed the problems with regard to the periodicity of the reporting systems for existing international instruments.

79. At its 13th meeting, the Group agreed provisionally to approve the following text of article 70:

Article 70

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

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

(b) Thereafter every four years.

2. Reports shall indicate factors and difficulties, if any, affecting the implementation of the present Convention and shall provide information on the characteristics of migration flows in which States Parties to the present Convention are involved.

Article 71

80. The basis for discussion of this article was part VI.3 of the proposals, which read as follows:

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

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

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

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

81. With respect to the above proposal, several considerations were noted concerning the extent to which the text of the Convention itself should limit the independence of the Committee to adopt its own rules of procedure and to define its method of work. The representative of the Federal Republic of Germany suggested at a certain point that provision should be made, for instance, for the required number of members needed to constitute a quorum or the qualified majority necessary for the adoption of the Committee's decisions. Some discussion ensued on those matters, but the Group finally concluded that it would be left to the Committee to

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decide. However, all delegations shared the view that at the second reading careful consideration should be given to the need to adjust figures in an appropriate manner, so as to foresee a logical balance between the number of States required for the entry into force of the Convention, which would give rise to the establishment of the Committee and the number of States required to constitute a quorum and the adoption of decisions by the Committee, either by simple majority or by a qualified majority. For that purpose, the representative of the Federal Republic of Germany, supported by other delegations, proposed to follow the formulation of article 39 of the International Covenant on Civil and Political Rights.

82. Upon the proposal of the representative of Denmark, it was agreed that, at a later stage, the order of the articles would be reversed so that present article 72 would become article 71 and present article 71 would become article 72.

83. With respect to paragraph 4, the Group agreed to delete the words "or at any other convenient place as determined by the Committee", taking into consideration that the capacity of the Committee to hold meetings outside the United Nations Headquarters would in many instances be limited to the availability of resources as allocated by other competent United Nations organs. Thus, the word "normally" would be inserted after the words "the Committee shall".

84. At its 13th meeting, the Group provisionally agreed on the following text for present article 71 (new article 72):

Article 71

1. The Committee shall adopt its own rules of procedure. [but these rules shall provide, inter alia, that]
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually in order to consider the reports submitted in accordance with article 71 of the present Convention.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 72

85. The basis for discussion of this article was part VI.4 of the proposals, which read as follows:

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

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

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

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

86. As the matters covered in article 72 were closely related to questions discussed in connection with article 69, the Group decided to hold informal consultations in order to seek an agreement.

87. From the said consultations, an agreement emerged concerning paragraph 1, in the sense of having the following phrases at the end, at the request of the representatives of Morocco and Denmark, respectively:

"The Committee may request supplementary information from States Parties when considering these reports. States Parties may participate in meetings of the Committee when their respective reports are being considered."

88. With respect to paragraph 2, strong objections were expressed by various delegations to the submission of the annual report of the Committee to the General Assembly through the Economic and Social Council. In their view, practical problems would arise from the schedule of work of the Committee and the Economic and Social Council that could delay passage of the report through the Council. The representative of Argentina pointed out that that might result in having the General Assembly consider the reports of the Committee two years later. Therefore, various delegations expressed their preference for the report of the Committee to be submitted directly to the General Assembly, irrespective of its presentation to the Council for its information. The delegation of Finland, supported by other delegations, stated that it did not see any major practical problems in submitting the reports to the General Assembly through the Council. He added that the involvement of the Council as a competent organ of the General Assembly should be stressed. The report, with possible recommendations from the Council, would considerably ease the task of the General Assembly which would not be the case if reference to the Council were omitted or made only in paragraph 3 of that article. In that connection, the representative of Algeria stated that the proposal to submit the reports of the Committee directly to the General Assembly should not be interpreted to mean that the Council would no longer deal with other aspects of questions relating to migrant workers and members of their families.

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89. The Group could not agree in that respect and therefore decided to place the words "through the Economic and Social Council" in brackets for future consideration, since the same delegations which objected proposed to make reference to the Economic and Social Council in paragraph 3 of the article.

90. Concerning paragraph 3, the same delegations proposed to include the words "the Economic and Social Council and" before "the Commission on Human Rights" and to delete the words "and to the Governing Body of the International Labour Organisation", in view of the pending debate on the question of the role of ILO in the supervision of the application of the Convention. The representative of India stated that the paragraph appeared to be redundant as the Secretary-General of the United Nations could transmit reports to concerned United Nations bodies and specialized agencies which were likely to be involved in certain aspects dealt with in the Convention

91. Regarding paragraph 4, the Chairman suggested that the possibility of inviting other agencies and organizations besides ILO to participate, in an advisory capacity in the work of the Committee, should be extended as well to intergovernmental organizations outside the United Nations system which dealt with matters covered by the Convention on a regional basis. The suggestion encountered no opposition.

92. The delegations of Algeria, Mexico and Morocco, in line with the views they had expressed concerning article 69 and in order to attribute to the International Labour Organisation a special role as an adviser to the Committee, proposed a new paragraph 2 reading as follows:

"2. In order to facilitate the co-operation of the International Labour Organisation in the application of the present Convention:

(a) Not later than sixty days before the opening of each regular session of the Committee, the Secretary-General of the United Nations may transmit to the Director-General of the International Labour Office all available information relevant to the application of the present Convention, including the reports and commentaries from States Parties referred to in paragraph 1 of this article;

(b) The Committee shall receive and consider the technical opinion and commentaries transmitted to it by the Director-General of the International Labour Office which may be relevant to matters covered in articles 7, 11, 25, 26, 27, 28, 32 and 33 of part II, in part III, in part V and in part VII of the present Convention;

(c) The Committee may also request the technical advice of the International Labour Organisation in other matters relevant to the present Convention."

93. The same delegations proposed to renumber paragraph 4 as paragraph 3, paragraph 2 as paragraph 4 and paragraph 3 as paragraph 5.

94. In view of the fact that the whole question of the role of ILO had not been settled, the Working Group decided to retain provisionally, at first reading, the following text for the present article 72 (new article 71):

Article 72

1. The Committee shall examine the reports submitted by each State Party to the present Convention and shall transmit such comments as it may consider appropriate to the other State Party concerned. This State Party may submit to the Committee observations on any comments made by the Committee in accordance with this article. The Committee may request supplementary information from States Parties when considering these reports. [States Parties may participate in meetings of the Committee, when their respective reports are being considered].

[1 bis. In order to facilitate the co-operation of the International Labour Organisation in the application of the present Convention,

(a) Not later than sixty days before the opening of each regular session of the Committee, the Secretary-General of the United Nations may transmit to the Director-General of the International Labour Office all available information relevant to the application of the present Convention, including the reports and commentaries from States Parties referred to in paragraph 1 of this article;

(b) The Committee shall receive and consider the technical opinion and commentaries transmitted to it by the Director-General of the International Labour Office which may be relevant to matters covered in articles 7, 11, 25, 26, 27, 28, 32 and 33 of part II, in part III, in part V and in part VII of the present Convention;

(c) The Committee may also request the technical advice of the International Labour Organisation in other matters relevant to the present Convention.]

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

3. The Secretary-General shall transmit the reports of the Committee to the [Economic and Social Council and] the Commission on Human Rights of the United Nations [and to the Governing Body of the International Labour Office].

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

Article 73

95. Discussion of this article was based on the proposal for Part VI.5, which read as follows:

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

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

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

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

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

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

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

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

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

"The report shall be communicated to the States Parties concerned."

96. The essence of the debate on the proposal was described in the first paragraph of part VI, since it related to the question of whether there should be in the Convention a compulsory procedure for the settlement of disputes. The delegation of India, supported in some respects by other delegations, proposed to foresee the whole procedure on the basis of previous agreements by Parties involved in any dispute concerning the interpretation and application of the Convention. Since no

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agreement could be reached at the present stage with respect to that basic element, the Working Group decided at its 13th meeting to retain provisionally the text as submitted, with the exception of elements appearing in brackets which would be subject to further consideration at the second reading. The text thus provisionally agreed for article 73 is the following:

Article 73

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

2. If within six months of the Committee's transmission of the initial communication to the State Party concerned the matter is not adjusted to the satisfaction of both parties, [either State] [either by bilateral negotiations or by any other means which are open to them, States Parties concerned, if they so agree] shall have the right to request the Committee to deal with the matter in accordance with the following paragraphs of this article.

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

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

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

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

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

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

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

The report shall be communicated to the States Parties concerned.

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Articles 74 and 75

97. The discussion on articles 74 and 75 was based on proposals made for parts VI-6 and VI-7. They were adopted provisionally as submitted. The text of the said articles is the following:

Article 74

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

Article 75

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

PART I. SCOPE AND DEFINITIONS

Articles 2 and 4

Article 2

98. At its 11th, 12th and 13th meetings held on 5 and 6 June, the Working Group also resumed consideration of the pending parts of the definitions to be inserted in part I of the draft Convention. The Group decided to consider this part on the basis of the new proposals for articles 2 and 4 submitted by the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden contained in document A/C.3/38/WG.1/CRP.5, which had been before the Group at its last session and which read as follows:

"Article 2

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

"2. For the purpose of the present 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 the present 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."

99. The Working Group also had before it proposals submitted by Barbados, Algeria, Egypt, Mexico, Pakistan, Turkey and Yugoslavia and various other suggestions during the consideration of the definition of the term "migrant workers". Those proposals, which had also been before the Group at its previous sessions, were contained in document A/C.3/36/WG.1/WP.1, columns A and B.

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100. During the consideration of these articles, the representatives of Italy and Sweden stressed that paragraph 1 of article 2 contained in document A/C.3/38/WG.1/CRP.5 should be read in conjunction with article 3, taking also into consideration article 4 as contained in document A/C.3/38/WG.1/CRP.6.

101. The representative of Pakistan suggested that the idea reflected in the proposals submitted by Barbados, Algeria, Egypt, Mexico, Pakistan, Turkey and Yugoslavia should be taken into account in the context of the first paragraph of article 2 in that the term "migrant workers" referred to any person whose presence in the State of destination might be temporary or permanent and his transfer might be covered by an agreement between the Governments of the State of origin and the State of destination or might be effected independently.

102. The representative of Denmark proposed that the provisions of article 2 should be in line with article 1 on definition of the European Convention on the Legal Status of Migrant Workers. She stressed that the proposal should not be interpreted to mean that Denmark did not recognize the human rights of illegal migrant workers. She felt that the definition in the European Convention was useful as it allowed States Parties to ratify certain parts of it while excluding others. The text of article 1 of the European Convention reads as follows:

"Article 1

"Definition

"1. For the purpose of this Convention, the term 'migrant worker' shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment.

"2. This Convention shall not apply to:

"a. frontier workers;

"b. artists, other entertainers and sportsmen engaged for a short period and members of a liberal profession;

"c. seamen;

"d. persons undergoing training;

"e. seasonal workers; seasonal migrant workers are those who, being nationals of a Contracting Party, are employed on the territory of another Contracting Party in an activity dependent on the rhythm of the seasons, on the basis of a contract for a specified period or for specified employment;

"f. workers, who are nationals of a Contracting Party, carrying out specific work in the territory of another Contracting Party on behalf of an undertaking having its registered office outside the territory of that Contracting Party."

/...

103. The representatives of the Federal Republic of Germany, the Netherlands and the United States expressed the view that the principles set forth in the definition contained in the European Convention could serve as a useful basis for further consideration of the definitions.

104. The representative of Yugoslavia, supported by several other delegations, stressed that the definition relating to migrant workers as formulated in the European Convention was unacceptable to them since it did not cover the protection of undocumented migrant workers or those who were in irregular or special categories which should be covered in a United Nations global convention for the protection of all migrant workers and members of their families.

105. Further, the delegation of the United States stated that the definition should make it clear that the scope of the Convention was limited to those lawfully admitted in the State of employment for the purpose of temporary employment.

106. The delegations of Argentina, the Dominican Republic, Ghana, Mexico and Yugoslavia emphasized that they could not support any formulation relating to the definition which would exclude the protection of the human rights of undocumented migrant workers as the mandate of the Working Group was to elaborate a convention for the protection of all migrant workers and members of their families.

107. The representative of Morocco objected to extending the provision of the convention to self-employed migrant workers and proposed putting the words "on his own account" in paragraph 1 of article 2 in brackets. The representative of the Byelorussian SSR supported that proposal. The representative of Morocco also proposed putting brackets around subparagraphs (a), (d) and (e) of paragraph 2 of article 2.

108. The representatives of Argentina, Finland, Greece, India, Italy and Spain expressed the view that, if the Convention should exclude the protection of highly privileged categories of self-employed migrants, its provisions should be extended to underprivileged self-employed workers.

109. The delegations of the Byelorussian SSR, the Ukrainian SSR and the USSR, while expressing their doubts over the usage of the term "economic activity" in the context of that article, remarked that in drafting the definitions appropriate provisions of other international instruments on the question should be taken into account.

110. At the 10th meeting, the representative of Mexico introduced some amendments which consisted in adding new subparagraphs (c), (d) and (e) to paragraph 3 of article 2. The amendments read as follows:

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

"(d) Persons who do not receive their main earnings in the State of employment [receiving State];

/...

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

111. The representative of India, while stressing that the Convention should include provisions for the protection of migrant workers involved in specific projects, introduced a new proposal as an alternative proposal for paragraph 1 of article 2 reading as follows:

"The term 'migrant worker' refers to any person who has departed, intends to depart or is in the process of departing from the State of origin or normal residence to the State of employment of which he/she is not a national, and is to engage, is engaged or has been engaged in an economic activity or any remunerative work for an employer [or on his/her own account] irrespective of his/her having in his/her possession a work permit or a work agreement and irrespective of the mode of his/her recruitment and nature of work assigned to him/her."

112. The delegation of Sweden, supported by Canada, Denmark, France and the Netherlands, found references to intentions to migrate or seeking employment abroad unacceptable.

113. The representative of the United Arab Emirates proposed a definition for the term "migrant workers" as follows:

"The term 'migrant workers' refers to any person who, in a State of which he is not a national, seeks to engage or is engaged in a work relationship in the capacity of a worker, this being the only means of earning his/her living."

114. The representative of Canada also introduced some new proposals which consisted in renumbering article 4 contained in document A/C.3/38/WG.1/CRP.5 as article 4 (1) and adding the following text as article 4 (2) and (3):

"Article 4

...

"2. For the purposes of the present Convention the expressions:

"(a) Permanent migrant worker means a migrant worker in a (regular situation) (lawful status) as defined in article 4 (1) (a) who has been admitted for an indeterminate period of time;

"(b) Temporary migrant worker means a migrant worker in a [regular situation] [lawful status] as defined in article 4 (1) (a) who has been admitted for a determinate period of time.

"3. For the purposes of the present Convention the expression migrant worker in a (regular situation) (lawful status) shall include both permanent migrant workers and temporary migrant workers."

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115. At its 13th meeting, the Working Group decided to retain the first paragraph of article 2 with the proposal by India as an alternative and to defer consideration of the remaining parts of the definition to its next session.

116. The representative of Canada further submitted other proposals to be considered in connection with part IV of the Convention. These proposals read as follows:

(a) That the title of part IV be amended to read:

"Provisions applicable to particular categories of temporary migrant workers and members of their families."

(b) That article IV-1 be replaced by article 55.

(c) That article 55 (1) be amended to read:

"States Parties shall apply the following provisions to temporary migrant workers in a regular situation who have been admitted to the receiving country for a specific limited period of time or on the basis of a work contract with an enterprise or employer carrying out in that country specific projects that by their nature are limited in time:

(d) That the following paragraph be added to article IV:

"The provisions of articles 22(4), 43(a), (b), (c) and (d), 45, 49, 50, 51 and 53 shall not apply to temporary migrant workers and members of their families specified in part IV."

117. At its 13th meeting, the Working Group decided, in view of the lack of time to consider fully all aspects pertaining to definitions and special categories of migrant workers (articles 2, 4, part IV and article 55), provisionally to retain only the proposals made for paragraph 1 of article 2 which reads as follows:

Article 2

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

[1. The term 'migrant worker' refers to any person who has departed, intends to depart or is in the process of departing from the State of origin or normal residence to the State of employment of which he/she is not a national, and is to engage, is engaged or has been engaged in an economic activity or any remunerative work for an employer [or on his/her own account] irrespective of his/her having in his/her possession a work permit or a work agreement and irrespective of the mode of his/her recruitment and nature of work assigned to him/her.]

/...

118. For reasons of time the Working Group could not finalize consideration of the other provisions concerning definitions and special categories of migrant workers. It thus decided to resume consideration of that whole area, which was the key element of the Convention, at its next session in the fall of 1984, on the basis of the same proposals submitted in document A/C.3/38/WG.1/CRP.5. It also agreed to finalize consideration of those and all provisions at the level of first reading, in order to allow Governments to have a full picture of the possible content of the Convention before proceeding to an effective negotiation of the final draft at the second reading.

119. At its 15th meeting, the Working Group adopted the present report. The Working Group expressed its wish that, for its next session, the Secretary-General would provide the secretariat of the Working Group with sufficient facilities to enable it to circulate documents in all working languages.

II. TEXT OF ARTICLES OF THE DRAFT INTERNATIONAL CONVENTION ON
THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND
THEIR FAMILIES TO WHICH THE WORKING GROUP PROVISIONALLY
AGREED ON AT ITS SPRING INTER-SESSIONAL MEETING OF 1984

Article 2

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

[1. The term "migrant worker" refers to any person who has departed, intends to depart or is in the process of departing from the State of origin or normal residence to the State of employment of which he/she is not a national, and is to engage, is engaged or has been engaged in an economic activity or any remunerative work for an employer [or on his/her own account] irrespective of his/her having in his/her possession a work permit or a work agreement and irrespective of the mode of his/her recruitment and nature of work assigned to him/her.]

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PART VI

Application of the Convention

Article 69

1. [For the purpose of reviewing the application of the present Convention], there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Their Families (hereinafter referred to as "the Committee") consisting of [eighteen] experts of high moral standing, impartiality and recognized competence in the field covered by the Convention. [The Committee shall carry out the functions hereinafter provided for.]

2. (a) [Twelve] members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person. [These persons shall be nationals of the nominating State.]

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

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

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

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

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

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

7. If an expert has ceased to function as a member of the Committee before the expiry of his term, the State Party which nominated the expert [or the Governing Body of the International Labour Organisation which appointed the expert,] shall appoint another expert for the remaining part of the term. [In cases where the new expert is appointed by the State Party], the appointment is subject to the approval of the Committee.

[8. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.]

[8. The States Parties shall be responsible for all expenses incurred in connection with the administration of the present Convention pursuant to part VI and shall reimburse the United Nations for all costs of meetings, staff, facilities and emoluments.]

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

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

Article 70

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

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

(b) Thereafter every four years.

2. Reports shall indicate factors and difficulties, if any, affecting the implementation of the present Convention and shall provide information on the characteristics of migration flows in which States Parties to the present Convention are involved.

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Article 71

1. The Committee shall examine the reports submitted by each State Party to the present Convention and shall transmit such comments as it may consider appropriate to the other State Party concerned. This State Party may submit to the Committee observations on any comments made by the Committee in accordance with this article. The Committee may request supplementary information from States Parties when considering these reports. [States Parties may participate in meetings of the Committee, when their respective reports are being considered.]

[1 bis. In order to facilitate the co-operation of the International Labour Organisation in the application of the present Convention,

(a) Not later than sixty days before the opening of each regular session of the Committee, the Secretary-General of the United Nations may transmit to the Director-General of the International Labour Office all available information relevant to the application of this Convention, including the reports and commentaries from States Parties referred to in paragraph 1 of this article;

(b) The Committee shall receive and consider the technical opinion and commentaries transmitted to it by the Director-General of the International Labour Office which may be relevant to matters covered in articles 7, 11, 25, 26, 27, 28, 32 and 33 of part II, in part III, in part V and in part VII of the present Convention;

(c) The Committee may also request the technical advice of the International Labour Organisation in other matters relevant to this Convention.]

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

3. The Secretary-General shall transmit the reports of the Committee to the [Economic and Social Council and] the Commission on Human Rights of the United Nations [and to the Governing Body of the International Labour Office].

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

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Article 72

1. The Committee shall adopt its own rules of procedure. [but these rules shall provide, inter alia, that]
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually in order to consider the reports submitted in accordance with article 71 of the present Convention.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 73

1. If a State Party considers that another State Party is not giving effect to the provisions of the present Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the other State Party concerned. [This State shall, within three months, submit to the Committee] [The Committee may ask the latter to submit to the Committee within three months] written explanations or statements clarifying the matter and the remedy, [if any,] that may have been taken by that State.
2. If within six months of the Committee's transmission of the initial communication to the State Party concerned the matter is not adjusted to the satisfaction of both parties, [either State] [either by bilateral negotiations or by any other means which are open to them, States Parties concerned, if they so agree] shall have the right to request the Committee to deal with the matter in accordance with the following paragraphs of this article.
3. The Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the present Convention.
4. The Committee shall hold closed meetings when examining communications under this article.
5. In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in paragraph 2, to supply any relevant information.
6. The States Parties concerned, referred to in paragraph 2, shall have the right to be heard by the Committee and to make submissions in writing.
7. The Committee shall, within 12 months after the transmission of the initial communication under paragraph 2, submit a report:
 - (a) If a solution within the terms of paragraph 5 is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

/...

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

The report shall be communicated to the States Parties concerned.

Article 74

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

Article 75

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

Article 81

1. The present Convention shall be open for signature by all States. It is subject to ratification, acceptance or approval.
2. The present Convention shall be open to accession by any State referred to in paragraph 1 of this article.
3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

Article 82

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the fifteenth instrument of ratification, acceptance, approval or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the fifteenth instrument of ratification, acceptance, approval or accession, it shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification, acceptance, approval or accession.

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Article 83

1. Where a State Party is constituted as a federal State, the national Government of such State Party shall implement all the provisions of the present Convention over whose subject matter it exercises jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national Government shall immediately take suitable and effective measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units adopt appropriate measures for the fulfilment of the present Convention.

Article 84

[84. Any State Party may, at the time of signature, ratification, acceptance, approval or accession, or at any other date, declare that the present Convention shall extend to all territories of the international relations for which it is responsible, or to one or more of them. Such declaration shall take effect at the time the present Convention enters into force for the State or, if made subsequently, on the first day of the month following the expiration of a period of three months after the date of the receipt of such declaration by the Secretary-General of the United Nations. Such declarations, as well as any subsequent extension and their withdrawal, shall be notified to the Secretary-General of the United Nations.]

[84. The present Convention shall be applicable, in all its terms, in all territories under the effective jurisdiction of States which become Parties thereto. Its provisions should apply at both the national and the local levels and each State Party therefore undertakes to adopt the necessary and effective measures to facilitate such application according to its particular structures and in accordance with its relevant internal procedures.]

Article 86

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of the receipt of the notification by the Secretary-General.

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Article 87

1. At any time after five years from the entry into force of the Convention a request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by two thirds of the States Parties shall be submitted to all States Parties for approval.

2. Approval of amendments shall be communicated by the States Parties to the Secretary-General of the United Nations who shall notify all Parties of such communications and, when the amendment has entered into force, of which States Parties are bound by it. Amendments shall come into force when they have been accepted by two thirds of the States Parties to the present Convention in accordance with their respective constitutional process.

Article 88

The Secretary-General of the United Nations shall notify all States which have signed, ratified, accepted, approved the present Convention or acceded thereto of the following:

- (a) Any signature;
- (b) The deposit of any instrument of ratification, acceptance, approval or accession;
- (c) Any date of entry into force of the present Convention in accordance with article 82;
- (d) Any other act, notification or communication relating to the present Convention.

Article 89

1. The original of the present Convention, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General shall transmit certified copies of the present Convention to all the States referred to in article 81.

Notes

1/ A/C.3/38/1 and A/C.3/38/5.
