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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

Text of the pending articles of the draft International Convention
on the Protection of the Rights of All Migrant Workers and Their
Families together with the proposals relating thereto

Introduction

1. At its last session the Working Group agreed that, in the fall of 1984, it would finalize consideration of all the provisions of the pending articles (art. 2, paras. 2 and 3 and arts. 4, 55 and 85) relating to the scope and definitions of the Convention (part I), additional rights (part III), particular categories of migrant workers (part IV), and final provisions (part VIII), at the level of first reading before proceeding to a second reading. 1/
2. With a view to facilitating the task of the members of the Working Group, the Secretariat has reproduced in the present document the full texts of all the pending articles and the proposals relating thereto.

I. PART I. SCOPE AND DEFINITIONS

A. Text of pending article 2 (paras. 2 and 3)

Article 2 2/

...

2. For the purpose of this Convention:

(a) Frontier workers shall be considered migrant workers when they engage in work in one State but retain their permanent residence in a neighbouring State to which they normally return every day;

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

(c) Seafarers, including fishermen, shall be considered migrant workers when they are engaged in any function whatsoever on board a vessel other than a warship registered in a State of which they are not nationals;

(d) Workers on a permanent offshore installation shall be considered migrant workers when the installation on which they are engaged falls under the jurisdiction of a State of which they are not nationals;

(e) Itinerant workers shall be considered migrant workers when, having their permanent residence in one State, they have to go for purposes of their occupation to another State for a short period.

3. The term "migrant worker" excludes:

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

(b) Persons employed on behalf of a State outside its territory for the execution of programmes of co-operation for development agreed with the receiving State and whose admission and status are regulated by specific international agreements or conventions.

B. Text of pending article 4

Article 4

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

(a) Are considered as documented or in a regular situation if they possess the requisite authorizations in respect of admission, stay and economic activity;

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

3. During the consideration of article 2 in the spring session of 1984, the representative of Denmark proposed that the provisions of article 2 should be in line with article 1 of the European Convention on the Legal Status of Migrant Workers. The text of article 1, paragraph 2 of that Convention reads as follows:

"Article 1 3/

"Definition

...

"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."

4. At the same session, the representative of Mexico 4/ proposed to add new subparagraphs (c), (d) and (e) to paragraph 3 of article 2, reading 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."

5. As regards pending article 4, the representative of Canada 5/ proposed renumbering it as article 4 (1) and adding the following subparagraphs as article 4 (2) and (3). The proposal reads as follows:

"Article 4

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

"(a) Are considered as documented or in a regular situation if they possess the requisite authorizations in respect of admission, stay and economic activity;

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

"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."

PART III. ADDITIONAL RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES IN A [REGULAR SITUATION] [LAWFUL STATUS]

C. Text of pending article 55 6/

"III.20. (1) States Parties shall apply the following provisions to migrant workers in a regular situation who have been admitted to the receiving country for a period of time 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:

"(a) The said migrant workers shall be admitted and authorized to work for the entire period of time required for the carrying out of the duties or assignments concerned;

"(b) The receiving country shall facilitate the installation by the enterprise carrying out the specific project of any necessary facilities for the said migrant workers and their families, such as housing, schools, medical and recreational services. The application of this provision shall not entail additional costs for the receiving State, unless this is provided for in specific agreements;

"(c) Subject to any provisions contained in specific agreements, the said migrant workers shall have the right to have their earnings paid in or transferred to their country of origin or the country of their normal residence;

"(d) The said migrant workers shall be entitled to be accompanied or joined by the spouse and dependent children for the duration of their duties or assignments, in accordance with article 44, paragraphs (1) and (2), except where this is not possible on account of considerations of safety;

"(2) The provisions of articles 35 to 42, article 43, paragraph 1 (e) to (g), article 46, article 48 and article 56 shall also apply to the said migrant workers. The other provisions of part III shall not apply to them;

"(3) Subject to the provisions of this Convention applicable to the said migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific provisions on social and economic matters relating to these migrant workers."

D. Proposals and amendments relating to article 55 7/

6. During the debate on proposed article 55 at the intersessional meeting of the working Group in the spring of 1983, the representative of Sweden proposed adding the words "or subcontracts relating thereto" after the words "specific projects" in paragraph (1).

7. The representative of the United States suggested starting the paragraph with a phrase reading "At no cost to the State of employment, unless provided for in specific agreements, the State of employment shall take appropriate measures to facilitate any required administrative processing of proposals by an enterprise or employer". He also proposed inserting the words "admitted and authorized to work for an appropriate period".

8. The representative of the Federal Republic of Germany proposed replacing the word "entire" by the word "appropriate" in subparagraph (a). The representative of Greece proposed substituting the words "duration of their contracts" for "duration of their duties or assignments" in subparagraph (d).

9. The representative of Morocco proposed deleting the word "additional" in subparagraph (b) as well as the words "except where this is not possible on account of considerations of safety" in subparagraph (d) and rewording paragraph (3).

10. Various delegations agreed that the Convention should contain a provision regarding the period of time when migrant workers were not in a position to work.

11. The representative of Italy submitted a revised text for a chapeau for article 55 prepared by the co-sponsors, Finland, Greece, Italy, Norway, Portugal, Spain and Sweden, reading as follows:

"States parties shall apply the following provisions to migrant workers who are employed by foreign enterprises or their subsidiaries and are lawfully admitted to the State of employment for a defined period for the execution [in that State] [in its territory] by said enterprises or their subsidiaries, directly or in joint ventures, of specific projects which by their nature are limited in time."

PART IV. PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

E. Pending text

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

Frontier workers

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

(2) The preceding paragraph shall be subject to any contrary provisions in agreements for the time being in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned.

(3) Frontier workers shall have the right freely to choose their employment or other economic activity subject to article 51. This right shall not affect their status as frontier workers.

Seasonal workers

IV.3. (1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment.

(2) A seasonal worker who, not counting seasonal interruptions, has been lawfully employed or working in the State of employment for an aggregate period of 24 months shall be entitled to take up other employment or economic activity, subject to any conditions or limitations imposed in accordance with article 51.

Seafarers and workers on permanent offshore installations

IV.4. (1) Seafarers, as defined in article 2 (2) (c), workers on permanent offshore installations, as defined in article 2 (2) (d), and members of their families shall enjoy the following rights:

(a) If the said workers have been authorized to take up residence in the State of employment, they and the members of their families shall be entitled to the rights provided for in parts II and III of this Convention;

(b) If the said workers have not been authorized to take up residence in the State of employment, they shall be entitled to all of the above-mentioned rights which can be applied to them by reason of their presence or work in the State of employment, excluding rights relating to or arising out of residence and rights arising out of article 44.

(2) The preceding paragraph shall be subject to any contrary provisions in agreements for the time being in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned.

(3) For the purpose of this article, the State of employment means the State under whose flag or jurisdiction is operated the ship or installation on which the migrant worker is engaged.

Itinerant workers

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

F. Proposals and amendments relating to part IV of the Convention

12. At the intersessional meeting of the Working Group in the spring of 1984, the representative of Canada submitted proposals 8/ to be considered in connection with part IV of the Convention. The 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."

PART VIII. FINAL PROVISIONS

Text of pending article 85 9/

"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."

Notes

1/ For further details, see para. 119 of the report of the Working Group on its intersessional meeting of 1984 (A/C.3/39/1).

2/ At its 13th meeting during its intersessional meeting in the spring of 1984, the Working Group decided provisionally to retain the proposals for para. 1 of art. 2, with a proposal by India as an alternative, 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]."

Notes (continued)

3/ See document A/C.3/39/1, para. 102.

4/ See document A/C.3/39/1, para. 110.

5/ See document A/C.3/39/1, para. 114.

6/ At its intersessional meeting in the spring of 1983, the Working Group began consideration of a text for article 55 on the basis of proposed art. III.21 contained in document A/C.3/36/WG.1/CRP.1/Add.3 reproduced above. During consideration of this article, many delegations felt that its substance had some connection with the proposals submitted for part IV of the Convention dealing with particular categories of migrant workers. The Working Group therefore agreed to postpone consideration of art. 55 to a later stage and to take it up together with part IV (for further details, see document A/C.3/38/1, paras. 51-60).

7/ See document A/C.3/38/1, paras. 51-60.

8/ See document A/C.3/39/1, para. 116.

9/ The working Group considered a text for art. 85 on the basis of art. VIII.4 contained in document A/C.3/38/WG.1/CRP.6 reproduced above (see also document A/C.3/39/1, paras. 27-28). In view of the complex nature of the question of reciprocity involved in the proposed article and the reference made to matters such as art. 55, on which the working Group had not yet reached an agreement, the working Group decided to postpone the proposed text for art. 85 (see document A/C.3/39/1, para. 28).
