



General Assembly

Distr.
GENERAL

A/C.3/40/1
20 June 1985

ORIGINAL: ENGLISH

Fortieth session
THIRD COMMITTEE
Working Group I
Agenda item 12

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)

Vice-Chairman: Mr. Bengt LIDAL (Sweden)

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 39/102 of 14 December 1984, the General Assembly, inter alia, took note with satisfaction of the reports 1/ of the Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families and commended it for concluding, in its first reading, the drafting of the preamble and articles which will serve as the basis

1/ A/C.3/39/1, A/C.3/39/4 and Corr.1 (English only).

for the second reading of the draft Convention; and decided that, in order to enable it to complete its task as soon as possible, the Working Group should again hold an intersessional meeting of two weeks' duration in New York, immediately after the first regular session of 1985 of the Economic and Social Council. The General Assembly invited the Secretary-General to transmit to Governments the reports of the Working Group so as to enable the members of the Group to undertake the second reading of the preamble and the articles during the intersessional meeting to be held in the spring of 1985, as well as to transmit the results obtained at that meeting to the General Assembly for consideration during its fortieth session. The General Assembly also invited the Secretary-General to transmit those documents to the competent organs of the United Nations and to international organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group.

3. In accordance with paragraphs 3 and 4 of General Assembly resolution 39/102, the Secretary-General has transmitted the results obtained during the thirty-ninth session of the General Assembly to Governments, competent organizations of the United Nations system and international organizations concerned.

4. The Working Group has held the following sessions at United Nations Headquarters: (a) the first session during the thirty-fifth session of the General Assembly, from 8 October to 19 November 1980; (b) a first intersessional 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 intersessional 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 intersessional meeting from 31 May to 10 June 1983; (g) a fourth session during the thirty-eighth session of the General Assembly from 27 September to 6 October 1983; (h) a fourth intersessional meeting in the spring of 1984 from 29 May to 8 June 1984; (i) a fifth session during the thirty-ninth session of the General Assembly from 26 September to 5 October 1984; and (j) a fifth intersessional meeting from 3 to 14 June 1985.

5. At its 1st meeting on 3 June 1985, the Working Group unanimously elected Mr. Bengt Lidal (Sweden) as its Vice-Chairman.

6. In pursuance of General Assembly resolution 39/102 the Working Group met at United Nations Headquarters from 3 to 14 June 1985 under the chairmanship of Mr. Antonio González de León during the first week, and Mr. Bengt Lidal during the second week. It held 17 meetings with the participation of delegations from all regions. Observers for the International Labour Organisation (ILO), the Economic Commission for Africa (ECA), and the Office of the High Commissioner for Refugees 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-ninth session of the General Assembly (A/C.3/39/4 and Corr.1 (English only));

(b) Report of the open-ended Working Group on its intersessional meeting from 29 May to 8 June 1983 (A/C.3/39/1);

(c) Text of the preamble and articles of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families provisionally agreed upon by the Working Group during the first reading (A/C.3/39/WG.1/WP.1);

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

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

(f) Cross-references in the draft International Convention on the Protection of the Rights of All Migrant Workers and Their Families (A/C.3/40/WG.1/CRP.3);

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

(h) Working paper submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden concerning the definitions of "migrant workers", contained in the revised proposal for part I, articles 2 and 4, and part IV, presented in document A/C.3/38/WG.1/CRP.5 of 26 September 1983;

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

8. For reference the following documents were available to the Working Group: the previous reports of the Working Group concerning the first reading (A/C.3/35/13; A/C.3/36/10; A/C.3/37/1; A/C.3/37/7 and Corr.1 and 2 (English only); A/C.3/38/1 and A/C.3/38/5).

I. ORGANIZATION OF THE WORK OF THE WORKING GROUP

9. At its last session 2/ the Working Group agreed to have a general debate at the beginning of the second reading of the draft Convention, allowing each delegation to make a general statement on the provisionally agreed texts. The Working Group also agreed to appeal to Governments to submit all proposals concerning the provisional texts before the beginning of its second reading and

2/ See A/C.3/39/4, paras. 82-85.

that the General Assembly should allow the Group to hold two sessions every year in New York of two weeks' duration each, an intersessional meeting immediately after the first regular session of the Economic and Social Council and a second session at the beginning of each regular session of the General Assembly, until completion of the final draft of the Convention.

10. As regards the Working Group's method of work, the Working Group agreed at the same meeting that it would base its work on the text of the preamble and articles of the international Convention contained in document A/C.3/39/WG.1/WP.1 which would be the consolidated text for negotiations. With a view to elaborating a text without brackets, the Working Group also decided that during the second reading it would proceed by reviewing the text sequentially article by article and part by part. Further, the Working Group agreed that, when there was an objection to any part of the text by any delegation, an alternative proposal should be submitted for the Group's consideration.

II. SUMMARY OF THE GENERAL DEBATE

11. In opening the session the Chairman stressed that the substantive debate on the Convention would be based on the text provisionally agreed upon at first reading (A/C.3/39/WG.1/WP.1) which amounts to a consolidated text for negotiation. Regarding the explanatory paper on the text of the draft Convention (A/C.3/39/4, para. 83), which he intended to prepare as a separate document for circulation to all Governments together with the draft Convention, he explained that in view of various circumstances he decided not to circulate it as it might have been interpreted as prejudging positions on the content of the Convention being elaborated. In the course of his statement he pointed out some of the areas of the text of the Convention in which major discrepancies have been reflected. For instance, regarding Part I, he stated that the most intricate part was in deciding on whether the Convention should cover exclusively persons employed by an employer or whether its provisions could be extended to cover self-employed migrant workers or persons undertaking "other economic activities". Regarding Part II, he pointed out various discrepancies in a number of articles, i.e., on the concept of the family, on conditions of detention, on conditions of expulsion and on the access of children of migrant workers to education.

12. Concerning Part III, he referred to some crucial areas such as the one referring to participation of migrant workers and members of their families in local political life, the equality of treatment in education, the development of educational facilities in the mother tongue of migrant workers, the possibility of migrant workers to change their activities and the limitations for receiving States with respect to expulsion. With reference to Part IV relating to the particular categories of migrant workers, he said that there were a number of factors that should be considered, since that part is an innovation of the new Convention. Concerning Part VI he referred to the question of the possible role of the ILO in the supervisory mechanism of the Convention as well as the costs of such supervision. He also referred to other complex issues such as the application of the provision of the Convention to dependent territories.

13. At its first meeting on 3 June, the Working Group heard a statement by the representative of Sweden.

14. The representative of Sweden, after a brief review of his country's experience with migration, expressed the hope that the Working Group would try to acquire a global approach to the question of labour migration. He stated that, contrary to what has been advocated, the protection of basic human rights of undocumented migrant workers would tend to discourage illicit or clandestine migration. His Government's opinion is that by granting certain rights to all migrant workers those who otherwise are exploited by traffickers and ruthless employers would be protected. In his view such a policy must be combined with legislative measures to make illegal and punishable the unauthorized employment of foreign workers in accordance with Part I of ILO Convention No. 143 on migrations in abusive conditions. That course of action should be reflected in Part II and Part V of the text of the Convention.

15. Turning to the question of definitions, he stressed that it would be absolutely necessary to have the definitions of the vital terms including that of migrant workers without alternatives. As regards article 2 (1) and in particular to the expression "on his own account", he stated that in his Government's view it would be unjustified to deprive a migrant worker of the protection accorded to him under the Convention as long as he is employed, for the reason that he decides to set up a small enterprise. Such a change of status would have immediate repercussions also on the rights enjoyed by members of his family if the self-employed worker were to be excluded from the application of the Convention. He thus suggested that the term "self-employed migrant worker" should be defined in a new subparagraph (g) to be added to article 2 (2) and that provisions applicable to this particular category should be added to Part IV. He warned against any hasty decision to delete any of the categories of workers contained in article 2 (2), escape clauses of sweeping character and the extensive use of optionality or reciprocity clauses. Regarding the machinery for the implementation of the provisions of the Convention he said that such action should be done in close co-operation with the supervisory body of the ILO, since some of its provisions would necessarily fall within the competence of the ILO.

16. At its second meeting on 3 June 1985, the Working Group heard statements by the representatives of Finland and the Federal Republic of Germany. With the agreement of the Working Group, the observer for the International Labour Organisation (ILO) also made a statement at that meeting.

17. The representative of Finland, after a short historical review of the issue of migration in his country, stressed that the dynamism involved in the nature of migration and the provisions of the Convention should be applicable to all migrant workers and that the difficulties of the individual migrant workers and their rights should not be considered by the States as an internal or regional problem but should be considered comprehensively and universally. The guiding principle should be the humanitarian interest of each individual rather than the interest of the State. In his opinion efforts should be made not to exclude any individual migrant worker or any group from the protection under the Convention. However, this does not mean that all groups are in need of the same rights and equal protection.

He added that it would not be appropriate for ratifying States to be able to exclude rights from any migrant worker or categories of migrant workers by a mere declaration made at the ratification, as rights given to migrant workers according to the Convention should not be subject to bargaining.

18. In his opinion the Convention should guarantee, in addition to the basic human rights, the provision of familial cultural services, possibilities for the children to maintain and develop their mother tongue as well as generosity and assistance in the settlement process. Also the reunion of the family is a prerequisite for the maintenance of the identity of the migrant worker which the second generation of migrants may be deprived of. He felt that the non-documented migrant workers should also be protected under the present Convention. He stated that his Government would welcome the Convention to be as flexible as possible in order to enable or even to favour regional agreements to be negotiated by various States or groups of States on specific questions. But the objective of flexibility should not be interpreted as a means to weaken the provisions of the Convention. As regards the implementation machinery, he expressed his support for a Committee consisting of independent experts with a clear mandate to review the application of the Convention with the participation of competent organizations within the United Nations.

19. The representative of the Federal Republic of Germany said it was an excellent idea to begin the second reading of the draft Convention with a general debate, because that was the right time to try to reach decisions on the parts of the text in square brackets and the parts of which only one version currently existed.

20. He added that the Federal Republic of Germany had always had reservations about the draft Convention. For that reason it had joined the Working Group rather late, and its current participation in the Group's work could not be construed as a change in its attitude to the draft. His country had had reservations about the preparation of a convention because the draft Convention reformulated for migrant workers human rights which could already be found in other United Nations instruments, such as the Universal Declaration of Human Rights and the Covenants. In his view, those instruments protected all human beings, whatever their social status, origin and nationality. If those human rights were to be restated each time an international instrument was produced on behalf of a particular category of the international population - today migrant workers, tomorrow all those who lived in a country of which they did not have the nationality, then perhaps the handicapped, young people and other groups - that would be tantamount to considering existing basic human rights instruments as insufficient and valueless. He also felt that the protection of migrant workers fell within the competence of ILO.

21. As regards the text of the draft Convention, he emphasized the necessity to adopt a text which would be ratified by a considerable number of States of origin as well as States of employment. While recalling that the ILO Convention No. 143 was adopted 10 years ago and to date had only received 14 ratifications by States, he felt that since the Federal Republic of Germany did not intend to ratify it, it would be more logical to him that the Federal Republic of Germany would refrain from ratifying a Convention, the provisions of which would be less favourable to the States of employment.

22. He considered that the sphere of application of the draft Convention was too wide. It should be limited to migrant workers as such, as in ILO Convention No. 143, and if the idea that the Convention should cover illegal migrant workers was accepted, the provisions applying to illegal migrant workers should be considerably limited.

23. The representative of the International Labour Office recalled that the Governing Body of ILO had taken a great interest in the elaboration of the proposed Convention since its very first beginnings. Further to the observations contained in document A/C.3/40/WG.1/CRP.1, he added that ILO shared the widespread desire that the proposed Convention should provide protection to all categories of persons employed in a country other than their own, even if it may be appropriate to limit the application of certain provisions to some of these categories. It would be entirely appropriate to provide protection, for example, not only to wage and salary earners but to self-employed persons, and also to frontier workers, to seafarers, and to family members as well. This followed from the perspective under which this new Convention was elaborated, that is to say, a human rights perspective. For example, freedom from arbitrary arrest and detention or questions concerning family reunification should not leave room for differential treatment. Another reason that could be adduced in favour of wide coverage of the proposed Convention was the fact that - except for social security - the two major ILO Conventions, or parts of them, did not extend to all categories of migrant workers.

24. He also added that ILO hoped that the Working Group would consider with particular attention those provisions in the draft provisionally agreed upon which would have the effect of laying down lesser rights, and thus calling in question protection already enjoyed under ILO instruments. As regards the supervision of the application, he stated that a major emphasis should be put on ensuring co-ordination of any arrangements for supervising the implementation of standards adopted under the auspices of the United Nations, on the one hand, and of ILO on the other. While it fell to the United Nations to determine the supervisory arrangements for its future Convention, there was great concern in the ILO Governing Body about the possible contribution representatives of workers' and employers' organizations might make. He concluded that the Governing Body and the Director-General of ILO would welcome the establishment of an effective system for supervising the future United Nations Convention, under which divergent interpretations would be avoided.

25. At its 3rd meeting on 4 June 1985, the Working Group heard a statement by the representative of Australia who gave a brief review of Australia's historical experience and policy regarding migration. Regarding the Convention, he stressed that the Australian Government strongly believed that the Convention should preserve a distinction between migrants admitted as permanent settlers and those admitted temporarily as workers or working without authority, because this distinction affected the attitude of the receiving State and its citizens' attitude, including employers' and migrants' attitudes to the State of employment. Despite his belief that the Convention, because it was designed essentially to address the special problems of migrant workers, would not have a wide application in Australia, he recognized that it may, if it retained the character it had in the

first draft, affect Australia as regards illegal migration. He added that Australia did face a significant problem with illegal immigrants who, in the Australian context, generally comprised persons who overstayed temporary entry permits or breached the conditions of their entry permits. He felt that the problem of illegal immigration could only be addressed effectively by co-operation between migrant-receiving States and migrant-origin States. He noted that part V of the draft contained various useful suggestions in that regard.

26. Commenting on the text of the Convention, he added that the draft, through its division into eight parts, particularly parts II on fundamental rights, III on rights of lawful migrants, IV on particular categories of migrant workers and V on the promotion of sound equitable and humane conditions for lawful migration, approached the problem in a methodical and sensible way, which, in the final version, should adequately preserve the difficult balance between the essential prerogatives of States and the needs and rights of the individual. He noted that Australia was not yet satisfied that the definition in article 2 sufficiently recognized the distinction between permanent settlers and those admitted temporarily as workers or who were working without authority. Australia would wish to reserve its option to comment on the proposed definition and exclusion clauses as they would relate to Australia's situation. He added that Australia firmly believed that the expertise in the area of labour and the protection of rights of workers and their families residing in the ILO needs to be appropriately tapped in the implementation of the Convention.

27. He then emphasized the belief of his Government that the ILO with its experience and expertise in the area of migration labour should be involved in the implementation of the Convention. With respect to the draft provided by ILO, he stated that although his Government did not endorse them all, it would favour the idea of a representative of the ILO Director-General being attached to the Committee as a non-voting expert member. He stated that the Convention should not erode the rights of individuals already identified in the International Covenant on Civil and Political Rights.

28. At its 4th meeting on 4 June 1985, the Working Group heard statements by representatives of Norway and Denmark. The representative of Norway stated that her country had, during the last century, turned from being an emigration country to becoming a country of immigration.

29. In her view, the mandate of the Working Group was broad and the definition of the term migrant worker must therefore also be broad. Thus, there should not be any justification for the exclusion of any group of migrant workers not properly covered by other international instruments. She stressed the importance of ensuring basic rights to all migrant workers, irrespective of their being in a regular or in an irregular situation, which would discourage the use and exploitation of undocumented foreign workers. However, she felt that care should be taken to ensure that migrant workers were not given a privileged status but should enjoy equality of treatment and that nothing in this Convention should legalize undocumented migration. In that regard, she stated that in the draft Convention provisions should be made to establish a framework for co-operation between States concerned and secure that action was taken to discourage illegal

migration. She underlined that special attention should be paid to the situation of migrant women and to the necessity of protecting the family unity of migrant workers. With respect to the system of supervision to ensure an effective implementation of the provisions of the Convention, she expressed her support for the idea of setting up an expert committee responsible for supervision and co-ordination with existing international instruments in the field of migration. She expressed the hope of her Government that the Working Group, during its coming negotiations, would reach the optimal consensus, thus eliminating the need for reciprocity and reservation clauses and securing a large number of ratifications.

30. The representative of Denmark stressed that the Working Group should elaborate a Convention which would meet with the agreement of all Members of the United Nations. He welcomed the efforts of the Working Group, as well as the informal consultations, which had produced the basis for the text of the draft Convention. He expressed the hope of his Government that the Working Group would be able to prepare a global legal instrument which would offer protection for the rights of all migrant workers and their family members in any conceivable situation. The main principle behind the work should be the humanitarian aspect in any situation, and that aspect should be strengthened to the widest possible extent in the text of the Convention.

31. As regards the machinery for the implementation of the Convention, his Government adhered to the idea that there should be co-operation between States when the implementation stage was reached. He expressed his support for the establishment of a committee of independent experts for reviewing the application of the Convention, thus following the example set by several other international instruments in the field of human rights. Competent specialized agencies within the United Nations should participate in one form or another in the monitoring body.

32. At its 7th meeting on 6 June 1985, the Working Group heard statements by the representatives of India, Greece, Yugoslavia, Algeria, Mexico, the Union of Soviet Socialist Republics, Tunisia and Turkey.

33. The representative of India pointed out that the Convention should adequately cover the interests of legal migrant workers and their families as well as the interests of the receiving States, keep in mind the problems and humanitarian aspects of illegal migration, and yet have wide acceptance in the comity of nations. With regard to the scope and definition of migrant workers, while the main objective of the present Convention was the protection of the rights of migrant workers and their families, it was to be emphasized that that basic objective should not be eclipsed by any undue enlargement or extension of the definition of migrant workers to include categories of people such as refugees or Stateless persons, students and trainees.

34. Addressing the issue of illegal migration, he pointed out that a basic feature of the draft Convention was the distinction between regular migrant workers and those in an irregular situation and that the Convention aimed at encouraging legal migration and at the same time discouraging and preventing clandestine or illegal migration. He felt that the burden of observance of the overall objective of the

protection of migrant workers and their families based on the fundamental distinction between the lawful and unlawful migrants should be shared both by the States of employment and by the States of origin. He further stated that although irregular migrant workers should be dealt with in a humanitarian manner and minimum fundamental rights should be extended to them, they should not be accorded the same rights as migrant workers in a lawful status. In his view, that understanding, which had always prevailed in the Working Group, ought to be enunciated in the Convention even more clearly.

35. With regard to the content of the minimum fundamental human rights which should be enjoyed by all migrant workers, he felt that the acceptance of part II of the Convention would be greater if the Working Group correlated it with existing human rights instruments. In his delegation's opinion, fundamental human rights in the Convention should be granted without discrimination of any kind. Such rights included rights to life, to security and integrity of person, to protection from torture, inhuman or degrading treatment or punishment, freedom of thought, expression, religion; right to protection against arbitrary treatment; right to equality as a person before law and courts, etc. Those rights should not be equated with other rights, which might be considered labour rights but were not equally fundamental.

36. Turning to the issue of the application of the Convention and the Committee which would be established to supervise it, he expressed the opinion that, given the nature and complexity of the subject of migrant workers, it was necessary that the Convention should include in the criteria for the composition of the Committee not merely the concept of equitable geographical distribution, but, more importantly, the concept of volume or stock of migration at both ends. The latter criterion was a much more relevant one for the Committee on Migrant Workers than, for instance, the concept of the "principal legal systems". Moreover, the Committee would benefit from ILO's expertise and the Working Group should look for a suitable mechanism to associate ILO in an advisory capacity.

37. He expressed the view that the complaint procedure of States Parties to the Committee, designed to be of a compulsory nature, did not reflect the actual and practical realities. If that provision had to be retained, it should be made optional and should include an element of flexibility on the basis of reciprocal declarations.

38. The representative of Greece, referring to the experience which might result from uprooting a person from his or her home country, pointed out that the Convention was original and significant in that it provides protection to categories of migrant workers not covered by other conventions. He expressed his delegation's opposition to illegal and clandestine migration and the situations encouraging such migration. But since illegal migrant workers do exist they cannot be ignored. Therefore, his delegation was, without any reservation, in favour of defending the basic human rights of all categories of migrant workers and their family members, adding that family reunion was a basic human right.

39. The representative of Yugoslavia emphasized that the Convention should guarantee the basic human rights to all migrant workers and members of their

families, irrespective of their status. He also considered of importance those parts of the Convention which elaborated on specific additional rights of migrant workers and members of their families who had a legal status as well as those provisions that would apply to special categories indicated in Part IV of the Convention. However, there had not been consistency in the implementation of the principle of equal treatment and opportunities and prohibition of discrimination. This particularly applied to employment, social security and certain fundamental political, civil and cultural rights.

40. The importance of the Convention lied also, in the initiation of Part V of a broader, direct co-operation between the States of employment and the States of origin. Many of the solutions contained therein might serve as good guidelines for the conclusion of bilateral agreements and other arrangements. While such guidelines existed in abundance in the Convention, one had an impression that some Parts are more like a recommendation than legal norms from a contractual document. He supported the idea to transform in the further work at least some of the recommendations into standards with appropriate material content or to ensure at least a higher degree of the obligation on the part of States in the settlement of outstanding questions, in elimination of certain forms of discrimination and in guaranteeing the same rights to migrant workers as to the national ones. The common denominator of these issues was the idea that the States would guarantee any right "in so far as it is possible" or "that they will provide it within the limits of their possibilities". This practically meant that by spotting the problems the Convention did not suggest the adoption of long-term national regulations on the basis of which a migrant worker would acquire legal security, but rather a pragmatic approach which would keep the migrant worker convinced that the rights he was enjoying in the State of employment were a gift of that State and not something that normally belongs to him on the basis of his work and residence in the territory of the State concerned. Also, considerable room has been left for limitations and restrictions which the States could continue to impose with regard to rights and freedoms mentioned in the Convention and the possibility to withdraw those rights and freedoms under broad terms. In the view of his delegation, the Convention should contain in its final form more binding legal standards.

41. He said that the scope of equality for migrant workers should be extended to social security rights. A number of political rights, such as freedom of press, freedom of association, should not be disregarded. The scope of the protection of the culture and language of migrant workers in the Convention should be endorsed. Legal means were by themselves not sufficient to put an end to differences in the treatment of migrant workers. It should therefore be stressed in Part V of the Convention that a constant co-operation between the receiving State and the State of origin is necessary not only in the field of migration policy but also, on a broader basis, in the field of education, upbringing, information and science.

42. Turning to the protective machinery provided in Part VI of the Convention, he expressed his delegation's support for the basic orientation contained in that Part. With regard to the question of reservations to the Convention, he pointed that it was unusual in international practice that reservations may be placed even on a definition. This would be a major obstacle to the attainment of the objective which was the reason for the preparation of this document.

43. The representative of Algeria said that the draft Convention should be an international instrument that could ensure the widest possible international protection for all migrant workers and members of their families. It should therefore contain the widest possible range of rights. It should take into consideration not only the rights already sanctioned, notably in the instruments prepared under the auspices of the United Nations, the International Labour Organisation (ILO) and other specialized agencies, but also current realities, so as to ensure the most appropriate protection for migrant workers and members of their families. With regard to the scope of the Convention, he felt that the Group should begin by establishing a clear and precise definition of the concept of a migrant worker and members of his family. He considered that the concept of a migrant worker should include the broadest categories of migrant workers and that the proposal that equal working conditions should be ensured for all migrant workers, whatever their status, should be seriously explored by the Working Group. He hoped that the Working Group would pay particular attention to the need to dissociate the labour relations that might exist between a migrant worker in an irregular situation and his employer from the irregular situation itself.

44. He also thought that if the Convention were to cover the widest possible categories of migrant workers, it could in no case set up a dual system for the treatment of those workers and the rights to be accorded them. His delegation remained open to the idea of including project-tied workers in the Convention but had the firmest reservations concerning the possibility of granting to them in that instrument, on the basis of their professional qualifications and the duration of their stay, rights over and above those accorded to other categories of migrant workers.

45. He added that the question of reuniting families, the protection of the rights of the children of migrant workers and the right of members of families of migrant workers to engage in remunerative activities should be considered, taking into account the unicity of the family and the need to strengthen it socially and economically. He thought that the Convention should contain provisions that would preserve and promote the cultural identity of migrant workers and members of their families and also provisions that took into account the right of their children to education, vocational training, employment and the preservation and protection of their cultural and national identity.

46. With regard to the mechanisms and procedures for monitoring the application of the Convention, his delegation favoured the establishment of a committee of experts to monitor the application of the Convention. Nevertheless, responsibility for monitoring the application of the Convention should rest primarily with the States parties. His delegation also considered that the International Labour Organisation should make its experience with regard to the protection of migrant workers available to the States parties and the committee of experts. His delegation supported the idea that the States parties should submit periodic reports to the committee which should constitute the basis for a dialogue between the State party and the committee of experts and should also contain information on the difficulties and obstacles encountered by States parties.

47. The representative of Mexico said that he welcomed the constructive spirit and genuine interest in the work of the Group which had inspired all delegations,

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enabling them to resolve their initially opposing positions. He stressed that the interests and objectives of all delegations had been reconciled. He affirmed that in recent decades, despite the economic crisis, international migration had proved to be a permanent and growing phenomenon at the global level, as the Secretary-General had stated in his report on the social situation of migrant workers and their families (E/CN.5/1985/8). He further stressed that the positive contribution of migrant workers to the economic development of the receiving States was fully recognized, and that international migration affected all regions and was an important factor in the economies of both developed and developing countries.

48. Referring to ILO Convention No. 143 and Recommendation 151, he observed that they did not cover the fundamental human rights to which all migrant workers were entitled, independently of their migrant status, and that that was the main purpose of the new Convention. He emphasized that the new Convention was a further step in United Nations efforts to define the fundamental rights of certain especially vulnerable population groups. He noted that the new Convention, far from weakening the norms of the Universal Declaration of Human Rights or the International Covenants on Human Rights, would actually help to strengthen them. He said that various international conferences, such as those on racism and racial discrimination and on population, had emphasized the importance of the new Convention.

49. He affirmed that the new Convention should be innovative in some aspects but should avoid trying to fulfil so many aspirations that it would turn out to be inapplicable for most States. With regard to the possible participation of ILO in monitoring the application of the Convention, he said that one non-voting representative of that organization might participate in the work of the Committee to present technical views on those areas in which ILO had competence. The same procedure might be used for other organizations of the United Nations system. He emphasized that his country had experience with both kinds of migration, which had begun in the previous century but had tended to increase in recent years. That had given his Government a very balanced perspective on the problem and on the real possibilities for action. There was an urgent need to find international norms to regulate migrant movements, always bearing in mind that such movements involved human beings.

50. The representative of the USSR referred to the Constitution of the Soviet Union and the range of legislative measures adopted for the protection of foreigners. He commended the work done by the Working Group and stressed that the provisions of the draft Convention so far agreed upon were the result of the constructive spirit of many delegations genuinely wishing to elaborate an important and efficient international instrument. However, a number of articles and certain provisions remained to be negotiated. He expressed the conviction of his Government that if the Parties concerned displayed the political will, desire and readiness to co-operate and adhere further to a method of work by consensus, the Working Group would be able to accomplish its mandate speedily. Regarding the text of the draft Convention, he emphasized that, while the situation of migrant workers was in fact very difficult and alarming and called for better protection, care should be taken not to provide them with more rights and freedoms than nationals.

51. He also voiced his concern over an unjustifiably extensive emphasis placed on the International Labour Organisation. The Working Group should not forget that it
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was elaborating a United Nations Convention of a universal character and not an ILO convention, where professional one-sidedness usually existed and specific requirements and order were followed. The Working Group should also not forget that different aspects of the problem were tackled by other specialized agencies such as UNESCO. Finally, the experience and expertise of ILO in that field which were often referred to, were represented, first of all, by certain knowledgeable individuals who, in view of their expertise were in a position to solve problems. He stressed that those individuals did not necessarily belong to ILO but too often served in their national Ministries of Labour and took part as members of delegations in different ILO sessions with some of them having working experience in the Committee of Experts. That was the reason why his delegation supported the statement of the representative of Algeria, who spoke against the participation of ILO representatives in the Committee for reviewing the application of the future Convention. However, his delegation did not exclude the possibility that sometimes, under specific circumstances, and on special request, the Committee could benefit from consultation with ILO.

52. The representative of Tunisia said that several reasons militated in favour of adopting a Convention that would protect all migrant workers, even if their status was sometimes equivocal. He drew the attention of the Working Group to the need to facilitate the reuniting of families, in view of the very real dangers resulting from the separation of families, especially for the children of migrant workers. In that connection, his delegation considered that making the reuniting of families subject to conditions such as the existence of decent or appropriate housing or the availability of stable resources in many cases simply rendered impossible the reuniting which was greatly desired and affirmed even by the receiving countries. His delegation supported the idea of preventing the uncontrolled departure and return of migrant workers, but rejected the idea of the compulsory mass return of such workers.

53. With regard to the mechanism for monitoring the application of the Convention, the establishment of a committee composed of independent experts elected by States seemed to be the most realistic and practical option. Co-operation, especially with specialized agencies such as ILO and UNESCO, should be strengthened and sought with a view to associating those agencies with the work of the monitoring body and enabling them to share with the members of the committee the experience they had acquired in their respective spheres of competence. Lastly, his delegation had misgivings about the desirability of including in the Convention a provision making it possible for States, when ratifying the Convention, either to make a declaration such as that provided for in the current article 89 of the draft, or to make reservations that would restrict or prevent the application of some provisions of the Convention. Any reservation or declaration of that kind would run counter to the aim of the Convention and might jeopardize its unicity of objective and purpose.

54. The representative of Turkey, after referring briefly to his country's experience with migration, stated that the stay and employment status of the migrant worker in the receiving State should be fully guaranteed and the worker should not be subjected to any direct or indirect pressure from the receiving State for his or her repatriation. Acknowledgement of permanent residence should be extended to those who had been working in the receiving State for a considerable

period of time. Migrant workers and their families should enjoy the equality of treatment with the nationals of the receiving State with respect to the right of work, access to social and health services, access to housing, including social housing schemes, and social security payments. The receiving States should avoid restrictive practices with regard to family reunification and take appropriate measures to ensure the protection of the unity of the families of migrant workers in a regular situation. The receiving States should also refrain from taking restrictive and discriminatory measures against the spouse and children of the migrant worker, preventing their employment.

55. Regarding the issue of participation of the migrant workers and members of their families in the process of decision-making, especially in those areas concerning the life and administration of local communities, he expressed the belief that such a right would contribute significantly to the establishment and promotion of understanding and harmonious relations between the society of the receiving State and the migrant community. Turning to the education of the children of migrant workers, he outlined their difficulties in that field, pointing out that they should be given the right to education, including access to pre-school educational institutions without discrimination, while special arrangements should be made for their education also in their mother tongue with emphasis on their cultural values. Finally he referred to the xenophobic tendencies which continued to manifest themselves and had even resulted in loss of lives in several instances in the past. He noted that special responsibility fell on Governments and the mass media to ease and avoid such tensions and to promote understanding between the social groups involved.

56. At its 8th meeting on 6 June 1985, the Working Group heard statements by the representatives of Italy, France, the United States and Colombia.

57. The representative of Italy pointed out that the sense of unity that should characterize the Convention implied the Convention should contribute to establish the legal framework for an orderly development of international migration processes and that the application to all migrant workers, without any exception, of fundamental rights. The Convention should thus include self-employed persons legally admitted and permitted to exercise their working activity in another country, as well as new forms of migration, as was the case of "project-tied" workers. The sense of unity of the Convention also implied that all its provisions and parts were interconnected and were thus not subject to optional acceptance. Moreover, the sense of unity implied that the Convention should not lower standards already established by other international instruments, such as those elaborated by the International Labour Organisation or other instruments applicable to specific situations, as in the case of the Geneva Convention and Protocol on refugees.

58. Turning to the mechanism for controlling the implementation of the Convention, such control should be exercised by a body of independent experts. Moreover, the Convention should guarantee an appropriate organic co-ordination between the Committee which would supervise the implementation of the Convention and other existing bodies, especially the International Labour Organisation.

59. The representative of France said that his country had been one of the first to indicate that it was in favour of the idea of a convention on the protection of

all migrant workers and their families, and that the Convention should constitute as broad a framework as possible. With regard to its scope, the Convention should cover the greatest possible number of persons engaged in an activity in a country other than their own. In other words, it should also cover those engaged in an activity which was not remunerated. He felt that the efforts to draw a distinction, in the case of migrant workers, working on their own account, between those who would benefit from the protection of the Convention and those who would be excluded by reason of their success and the number of persons they employed, were doomed to failure. The Convention should not provide for too many exclusions and should be entirely devoid of ambiguity. He considered that the wording adopted in first reading, which drew a clear distinction between the rights accorded to all migrant workers, and thus also to those who were in an irregular situation, and the rights accorded only to migrants in a regular situation, seemed capable of reconciling minimal protection for all migrants and recognition of the principle of State sovereignty.

60. In his view, the Convention should make provision for a monitoring system with which ILO would be associated in an appropriate manner, in view of its acknowledged competence in the matter and in order to avoid any disparity in the interpretation and application of the international norms relating to migrant workers by the relevant organs within the United Nations system. In conclusion, he explained that in his view, amendments could be introduced at any time until the Convention was finally adopted by the United Nations.

61. The representative of the United States, after briefly referring to the historical experience of his country with migration noted that, although his delegation would have preferred to see the Convention limited to documented migrant workers, the option which had prevailed was for a portion of the text to cover non-documented workers. Bearing in mind both the sovereign right of States to control their borders and thus to determine and apply their own immigration laws and policies, and the need to protect the fundamental human rights of all persons, his delegation viewed that organizational framework as a logical approach. He was of the opinion, however, that it was essential that the rights of non-documented migrant workers be limited to basic human rights.

62. With regard to definitions, his delegation strongly supported the view that it was necessary to establish clear, concise and unambiguous definitions of critical terms, such as "migrant worker". Only in that way could the Working Group move on to meaningful consideration of the rights to which the persons thus defined were entitled. In that connection, he supported those delegations that had taken the position that the Convention should distinguish clearly between migrant workers granted permanent resident status and those granted temporary resident status. He finally pointed out that the United States, recognizing the mandate of the ILO to protect the interests of workers when employed in countries other than their own, as well as the long experience and unique expertise of that organization with regard to migrant workers and their families, firmly supported providing for an important role for ILO in the implementation of the Convention.

63. The representative of Colombia underlined the differences which existed in interpreting the reasons for and consequences of the migration of workers and their families, in order to emphasize the various facets and complexity of the problems

created by such migration, which often led to neglect of the needs and rights of the individual as a person and disregard for his dignity as a human being.

64. He noted that the desire of people to enjoy one of the fundamental human rights, namely the right to work to support themselves and their families, had in many cases become the very means by which the rights of women, minorities and children, as well as fundamental human rights, were denied.

65. In view of the foregoing, he concluded that the phenomenon was multifaceted, and he therefore felt that it was essential to establish an independent, specialized instrument which had the necessary flexibility and breadth to deal with the entire multifaceted problem in its proper dimensions. He expressed interest in maintaining a constructive and magnanimous dialogue so that the Working Group on the Rights of All Migrant Workers and Their Families could arrive at a consensus, thereby effectively protecting the individual migrant worker and his family.

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

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

Preambular paragraph (1)

67. At its 4th meeting on 4 June, the Working Group considered preambular paragraph (1) on the basis of preambular paragraph (1) of the text agreed upon during the first reading (A/C.3/39/WG.1/WP.1) reading as follows:

"(1) [Reaffirming] [Taking into account] the [permanent validity] [importance] of the principles [, standards] [and norms] embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women,"

68. With regard to the opening words of the paragraph in square brackets, the representative of Italy, supported by the representative of the Netherlands expressed a preference for the word "Reaffirming". The representative of France, supported by the representatives of the Federal Republic of Germany and the United States, expressed a preference for the words "Taking into account" because in their view the word "Reaffirming" would tie the present Convention to previous conventions to which several States were not parties. The Chairman stated in that connection that States parties to the Convention would not be reaffirming previous human rights instruments as such but the principles inspiring such instruments.

69. Turning to the words "permanent validity" and "importance" in square brackets, the representatives of France and the Federal Republic of Germany expressed a preference for the word "importance" because, in their view, the words "permanent validity" would imply that the relevant norms and standards could never be changed, which was not the case. The representative of Colombia preferred the words "permanent validity".

70. In light of the debate, the Chairman proposed that the following text be adopted at the beginning of preambular paragraph (1):

"Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, ..."

71. The Working Group agreed to the above-mentioned proposal. Thus, at the 4th meeting on 4 June, preambular paragraph (1) was adopted as follows:

(1) Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

Preambular paragraph (2)

72. At its 4th meeting on 4 June, the Working Group considered preambular paragraph (2) on the basis of preambular paragraph (2) contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"(2) [Reaffirming also] [Taking into account] the principles [and standards] [set forth in the relevant instruments] elaborated within the framework of the International Labour Organisation, especially the Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151),"

73. The Chairman suggested that the opening part of the paragraph should read as follows:

"Taking into account also the principles set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, ..."

74. The representative of Italy stated that the word "standards" was very important in the context of ILO Conventions and should therefore be kept, while the representative of the United States said that his delegation would have difficulty accepting the word "standards". The representative of Australia suggested that the word "established" be used instead of the word "elaborated". The representative of Panama preferred the word "recognized" to the words "set forth".

75. After a brief debate, the Working Group, at its 4th meeting on 4 June, adopted preambular paragraph (2) as follows:

(2) Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151),

Preambular paragraph (3)

76. At its 4th meeting on 4 June, the Working Group adopted preambular paragraph (3) as it had emerged from the text agreed upon at first reading in document A/C.3/39/WG.1/WP.1, without changes, as follows:

(3) Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Preambular paragraph (4)

77. At its 4th meeting on 4 June, the Working Group discussed preambular paragraph (4) on the basis of preambular paragraph (4) of document A/C.3/39/WG.1/WP.1 as follows:

"(4) Recalling [the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,] the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, The Code of Conduct for Law Enforcement Officials and the Slavery Conventions,"

78. In view of developments at the thirty-ninth session of the General Assembly, the Working Group adopted the above-mentioned text after replacing the words "the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" by the words "the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". The text of preambular paragraph (4) as adopted reads as follows:

(4) Recalling the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, The Code of Conduct for Law Enforcement Officials and the Slavery Conventions,

Preambular paragraph (5)

79. At its 4th meeting on 4 June, the Working Group, after a brief debate, adopted preambular paragraph (5) as follows:

(5) Recognizing the importance of the work carried out in connection with migrant workers and their families in various organs of the United Nations system, in particular in the Commission on Human Rights, the Commission for Social Development, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization and in various regional organizations,

Preambular paragraph (6)

80. At its 4th meeting on 4 June, the Working Group discussed preambular paragraph (6) on the basis of the following two texts in square brackets which had been established during the first reading:

"[(6) Recognizing that the principal objective of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, [that the International Labour Organisation has thus been vested with special authority and responsibility to deal with the subject of migrant workers and that the International Labour Organisation possesses unique competence, expertise and experience in migrant worker matters] [and that the International Labour Organisation has made a significant contribution to the promotion of the interests of migrant workers,]]"

"[(6) Recognizing the importance of the International Labour Organisation in the defence of the interests of migrant workers,]"

81. The representative of Sweden proposed the following text for preambular paragraph (6):

"Recognizing that one of the principal objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own."

82. Other delegations suggested as alternatives opening the paragraph with "Recognizing", "Taking into account" "Recalling" or "Considering". The representative of India suggested that the word "principal" should be deleted before the word "objective", because that word gave the impression that there were several categories of objectives. The representative of the United States expressed a preference for the retention of the following sentence:

"... that the International Labour Organisation possesses unique competence, expertise and experience in migrant worker matters".

In connection with the latter statement, the representative of the Ukrainian SSR expressed a preference for a shorter version of the paragraph, either as proposed by Sweden or the shorter of the two versions which came out of the first reading. The representative of Finland proposed the addition of the words "and their families" after the words "migrant workers".

83. In light of the debate, the Chairman proposed the following compromise text which was adopted by the Working Group at its 4th meeting on 4 June:

(6) Recalling also that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, as well as the expertise and experience of the said organisation in matters related to migrant workers and their families,

84. The Working Group decided, at its 4th meeting on 4 June, to renumber preambular paragraph (5) as paragraph (6) and preambular paragraph (6) as paragraph (5).

Preambular paragraph (7)

85. At its 4th meeting on 4 June, the Working Group considered preambular paragraph (7) on the basis of the following text provisionally agreed upon during the first reading:

"(7) Recognizing the progress made by certain States on a regional or bilateral basis, as well as the importance and usefulness of bilateral and multilateral agreements for the protection of the rights of migrant workers and their families,"

86. At the same meeting, after a brief discussion, the Working Group adopted preambular paragraph (7) with a few amendments as follows:

(7) Recognizing the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and their families as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Preambular paragraph (8)

87. At its 4th meeting on 4 June, the Working Group adopted preambular paragraph (8) as it had emerged after the first reading as follows:

"(8) Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,"

Preambular paragraph (9)

88. At its 4th and 5th meetings on 4 and 5 June 1985, the Working Group considered preambular paragraph (9) on the basis of the following text which had been provisionally agreed upon during the first reading:

"[(9) Aware of the [positive] impact that the flows of migrant workers have on [the process of regional integration] and of the [important] role that such flows may play in the organization of the new international economic order,]".

89. The representatives of Sweden, Finland, the Federal Republic of Germany, Norway, Denmark and the United States felt that preambular paragraph (9) was superfluous and therefore they supported the deletion of the paragraph. In the opinion of the representative of Finland, the contents of the paragraph entered rather the sphere of social science and tried to explain the results of migration. The representative of Italy stated that the consideration expressed in preambular paragraph (9) had no relevance to the Convention, the purpose of which was to protect the human person of the migrant worker irrespective of the impact of migrations in other fields. Some representatives stated that they could accept the first part of the paragraph if the word "positive" were omitted.

90. As various delegations expressed the view that the preamble should contain only concepts that were dealt with in the operative part and in view of the relation of the provisions of preambular paragraphs (9) and (10), the Chairman suggested that interested delegations should meet in informal consultations and try to combine preambular paragraphs (9) and (10).

91. The delegation of the Federal Republic of Germany suggested replacing preambular paragraph (9) by the formulation reading:

"Considering the multiple effects that migration of workers could have upon political, economic and cultural relations between States,".

92. In support of the Chairman's suggestion to combine preambular paragraphs (9) and (10), the representative of India introduced a new proposal to replace preambular paragraphs (8), (9), (10) and (12) by the following:

"Recognizing the historical phenomenon of migration of workers, the continuing relevance and validity of its causes, the importance and extent of international migration involving millions of people and a large number of countries and the political, social, economic and cultural effects of migration on States and the international community,".

93. The representatives of Benin, Cape Verde and Colombia expressed themselves in favour of retaining the ideas contained in preambular paragraph (9) as they had a particular importance for developing countries.

94. At its 6th meeting on 5 June, the Working Group had before it a compromise text which was introduced by Italy as a result of some informal consultations to replace preambular paragraphs (9) and (10). The Working Group adopted it as preambular paragraph (9) of the draft Convention, reading as follows:

(9) Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to harmonizing the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and their families,

Preambular paragraph (10)

95. At its 4th and 5th meetings on 4 and 5 June 1985, the Working Group discussed preambular paragraph (10) on the basis of preambular paragraph (11) as provisionally agreed upon during the first reading and contained in document A/C.3/39/WG.1/WP.1, which read as follows:

"(11) Considering the situation of [vulnerability] in which migrant workers find themselves in the receiving societies [for reasons relating, among other things, to their absence from their country of origin and to the difficulties of their [insertion] [adaptation] [presence] in the receiving society] [for various reasons],"

96. While the representative of France expressed his preference for maintaining the word "insertion", the representative of Australia expressed his difficulty over the word "insertion" because of the implication it may have vis-à-vis illegal migrant workers.

97. The representative of the United States suggested deleting the word "insertion" and replacing the words "... their absence from their country of origin and to the difficulties of their [insertion] [adaptation] [presence] in the receiving society]" ... by the phrase "their absence and the difficulties they may encounter arising from their presence". The representative of the Federal Republic of Germany suggested deleting the word "vulnerability".

98. After some discussion, and in the spirit of reaching a compromise, the Chairman suggested the following formulation:

"Considering the situation of vulnerability in which migrant workers frequently find themselves in the receiving societies for reasons relating, among other things, to their absence from their State of origin and to the difficulties of their presence in the receiving society,"

99. After a brief discussion, the Working Group adopted on second reading preambular paragraph (10) of the draft Convention as follows:

(10) Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves owing, among other things, to their absence from the State of origin and to the difficulties they may encounter arising from their presence in the receiving State,

Preambular paragraphs (11), (12) and (13)

100. At its 5th and 6th meetings on 5 June 1985, the Working Group considered a text for preambular paragraph (11) of the draft Convention on the basis of preambular paragraphs (12), (13) and (14) as provisionally agreed upon by the Group during the first reading and contained in document A/C.3/39/WG.1/WP.1, which the Group agreed to combine together in one single paragraph upon the suggestion of various delegations. The text of preambular paragraphs (12), (13) and (14) read as follows:

"[(12) Bearing in mind the beneficial effects that labour mobility on an international scale has had and will continue to have on the economy of both States of origin and States of employment,]

"[(13) Bearing [also] in mind on one hand the contribution of migrant workers to the economy of the receiving countries and on the other hand the social costs connected with the migratory process,]

"[(14) Recognizing the necessity to promote balanced international economic development in order to minimize the [need for and] problems linked with international migration,"]].

101. While the representatives of the Federal Republic of Germany, Italy and Denmark stressed their objection to including in the Preamble concepts which were not dealt with in the operative part of the Convention, the representatives of Finland, Benin and Ecuador expressed their preference for maintaining preambular paragraph (13) or at least reflecting the idea of the contribution of migrant workers to the economy of the receiving States somewhere in the preamble.

102. Upon the proposal of the Chairman, the Working Group agreed to hold informal consultations with interested delegations in order to formulate a compromise text.

103. In the course of the debate, the Working Group also agreed that the provisions of preambular paragraphs (15) and (16) as provisionally agreed upon at the first reading and contained in document A/C.3/39/WG.1/WP.1 should be read in conjunction with the provisions of preambular paragraphs (12), (13) and (14). The text of preambular paragraphs (15) and (16) respectively read as follows:

"(15) Convinced that the status and fundamental rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

"(16) Taking into account the fact that migration is often the cause of serious problems for the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,".

104. The Working Group agreed to adopt preambular paragraph (15) with the deletion of the words "status and fundamental" in the first line and to adopt preambular paragraph (16) as it stood. Further, the Working Group decided that paragraphs (15) and (16) as adopted would respectively become paragraphs (11) and (12) of the draft Convention on second reading and adopted them as follows:

(11) Convinced that the rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

(12) Taking into account the fact that migration is often the cause of serious problems for the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Preambular paragraph (13)

105. At its 6th meeting on 6 June 1985, the Working Group considered a text for preambular paragraph (13) on the basis of the text of preambular paragraph (17) contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"[(17) Considering, therefore, that the fundamental human rights and labour rights of all migrant workers and their families, including the rights of non-documented workers, who are even more defenceless because of their irregular status, require appropriate protection at the international level,]".

"[(17) Bearing in mind that the human problems involved in migration are even deeper in the case of illegal migration and that therefore appropriate action should be reinforced also at the international level in order to prevent and suppress illegal and clandestine movements and traffic of migrant workers, while at the same time assuring the protection of their fundamental human rights,]".

106. During the consideration of the paragraph, the representatives of the Federal Republic of Germany, Italy, the United States, Algeria and Cape Verde expressed their preference for basing the provision of preambular paragraph (13) on the text contained in the right hand column. The representatives of Italy and Cape Verde voiced their difficulties with the term "illegal" in the phrase "illegal and clandestine movements". The representative of Cape Verde, supported by the representative of the Federal Republic of Germany, proposed the deletion of the word "illegal" as acts of clandestine trafficking were implicitly contrary to established laws. The representative of Colombia proposed replacing the words "appropriate action should be reinforced also at the international level" by the words "adequate measures should be reinforced at the international level".

107. After some informal consultations the Working Group had before it a new text for paragraph (13) as follows:

"(13) Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration, and convinced therefore that appropriate action should be encouraged in order to prevent and suppress clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

108. After some discussion the Working Group adopted it as preambular paragraph (13) as follows:

"(13) Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration, and convinced therefore that appropriate action should be encouraged in order to prevent and suppress clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,"

Preambular paragraph (14)

109. At its 6th and 8th meetings on 5 and 6 June, the Working Group considered a text for preambular paragraph (14) on the basis of preambular paragraph (18) contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"(18) Considering that in most cases workers who are non-documented or in an irregular situation are employed under worse conditions of work than other workers including migrant workers in a regular situation, and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,".

110. During the consideration of the paragraph, the representative of Algeria suggested deleting the words "in most cases" and inserting the word "frequently" between the words "irregular situation are" and the word "employed". The representative of Zimbabwe proposed deleting the phrase "than other workers" to avoid interpreting the sentence to mean that national workers were in a better condition than other workers. The representative of the United States proposed replacing the word "worse" by the words "less favourable".

111. After a brief discussion the Working Group agreed to delete the words "including migrant workers in a regular situation" and adopted paragraph (14) as follows:

(14) Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Preambular paragraph (15)

112. At its 8th meeting on 6 June, the Working Group considered a text for preambular paragraph (15) on the basis of preambular paragraphs (19) and (20) contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"[(19) Considering that the widest recognition of the rights of all migrant workers and the effective safeguarding of these rights will accordingly tend to discourage the seeking of migrant workers who are non-documented or in an irregular situation and to contribute to a reduction in irregular migration flows,]

[(20) Considering however that, in order to encourage prospective migrants for employment to respect the normal procedures established by the competent authorities of the State concerned, the recognition of certain rights ought to be limited to migrant workers in a regular situation, including those whose situation has been regularized,]"

113. During the discussion of the paragraph most delegations suggested that the idea contained in the two preambular paragraphs should be combined in one single paragraph.

114. The representative of the Federal Republic of Germany submitted a new text for preambular paragraph (15) reading as follows:

"(15) Recognizing that everything possible must be done to discourage the employment [recruitment] of migrant workers in an irregular situation, particularly by the imposition of financial penalties on those who employ such workers,"

115. With a view to combining the provisions of paragraphs (18) and (19), the representative of Finland submitted a new proposal for paragraph (15) reading as follows:

"Considering further that recourse to the employment of migrant workers who are in an irregular situation will also be discouraged if human rights are guaranteed to all migrant workers and, moreover, that granting certain additional rights to migrant workers and their families in a regular situation will encourage all migrants to respect and comply with the laws and procedures established by the States concerned,".

116. In the light of the discussion and the text proposed by Finland, the representative of the Federal Republic of Germany, in a spirit of compromise, did not insist on maintaining his proposal.

117. After some discussion on the proposal by Finland, the Working Group agreed to replace the phrase "will be also discouraged if human rights are guaranteed to all migrant workers" by the phrase "will also be discouraged if the fundamental human rights of all migrant workers are more widely recognized ...". The Working Group thus adopted preambular paragraph (15) as follows:

(15) Considering further that recourse to the employment of migrant workers who are in an irregular situation will also be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Preambular paragraph (16)

118. At its 8th meeting on 6 June 1985, the Working Group considered a text for preambular paragraph (16) on the basis of preambular paragraph (21) contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"(21) Convinced therefore of the need to bring forth the international protection of the rights of all migrant workers and their families reaffirming and establishing basic norms in a comprehensive Convention which could be applied universally,

"Have agreed on the following articles:"

119. At the same meeting, the Working Group adopted the text as it stood as preambular paragraph (16) of the draft Convention.

120. The Working Group thus concluded its second reading of the preamble of the draft Convention.

PART I

Scope and definitions

Article 1

121. At its 9th and 10th meetings on 7 June 1985, the Working Group considered a text for article 1 on the basis of article 1 as provisionally agreed upon on first reading and contained in document A/C.3/39/WG.1/WP.1, which read as follows:

"Article 1

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

122. During the debate the representative of the Federal Republic of Germany proposed inserting the phrase "in particular with respect to those migrant workers in an irregular situation" after the words "except as otherwise provided hereafter". The representatives of France, Mexico and Greece raised doubts about the proposal of the Federal Republic of Germany and objected to its inclusion.

123. The representative of the Federal Republic of Germany placed on record that his delegation would like its proposal to be reflected in the report even if the proposal was not maintained by the Working Group.

124. Regarding the word "property" in brackets in the text, the representative of Finland, supported by Australia, suggested removing the brackets around it as it was used in article 2 of the International Covenant on Civil and Political Rights. In that connection the representative of Yugoslavia drew the attention of the Working Group to article 7 of the draft Convention where the word "property" was not kept in brackets. While some delegations pointed out that the word "property", as contained in the English version of the International Covenant on Civil and Political Rights, might have a different meaning in other linguistic versions of the Covenant, the representative of France pointed out to the Group that the French word "fortune" was appropriately used in the Covenant. The representative of Morocco formally objected to the use of the term "fortune" in the French text as the word may have a different meaning. She further added that the word "property" should not be used in the Convention as in other parts of the Convention, such as article 32, reference was made only to working tools, savings and personal effects which migrant workers were allowed to take with them. She stressed that, under the provisions of article 47, migrant workers enjoyed exemption from customs duties in respect of their personal effects and portable equipment. The representative of the USSR also stated that the word used in the Russian text of the Covenant corresponded to it and that he preferred the Russian terminology used in the International Covenant on Civil and Political Rights. The representative of Italy emphasized that migrant workers should not be discriminated against on the grounds that they owned property.

125. The representative of Turkey supported using the term "property"; however, as a general observation he stressed that the proposed Convention should not be a blueprint of the previous Covenants and Conventions.

126. The representative of Cape Verde said that the term "economic position" was broader than the term "property" which was a legal term with specific meaning. He therefore suggested that both terms should be maintained in the article.

127. After a lengthy discussion, the representative of Cape Verde, supported by the representative of Italy and other delegations, suggested that the word "property" should be discussed in an informal consultation.

128. Regarding the word "ethnic" the representatives of France, Morocco, Cape Verde, the United States, the Federal Republic of Germany, the Ukrainian SSR and Yugoslavia stressed that the word "ethnic" should be maintained in the text as migrant workers might be of the same nationality but from a different ethnic background, which might reflect some cultural diversities.

129. After some discussion the Working Group decided to keep the word "ethnic" without brackets.

130. As regards the word "nationality", the representative of Cape Verde proposed replacing it by the term "citizenship". In objection to that proposal, the representative of France stated that the word "nationality" should be maintained.

131. Regarding the phrase "without distinction of any kind such as ... nationality", the representative of France raised the question as to whether the absence of such distinction between migrant workers on the basis of nationality would not prevent the State of employment concerned to grant a more favourable treatment to certain migrant workers because of some already existing bilateral or multilateral agreements. Despite the reply given and according to which the Convention provides minimal standards, the representative of France insisted on placing his observations on record so that this issue could be raised again at a later stage when the Working Group, on second reading, considers Part VII of the draft Convention concerning the general provisions.

132. Regarding the term "marital", the Chairman asked whether the French term "état civil" would better reflect the idea conceived in that part of the article. The representative of the United States felt that there was a slight ambiguity in the phrase "any other status" as those words in themselves might constitute a status. He therefore suggested rewording the phrase after the words "economic position" to read "property, marital status, birth or other status".

133. With reference to the expression "except as otherwise provided hereafter and without distinction", the representative of Italy suggested deleting the word "and" between "hereafter" and "without" and restructure the beginning of the article to read: "The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction ...". The Working Group agreed to that formulation.

134. Turning to the expression "without any distinction on grounds such as ...", the representative of Cape Verde, expressing his difficulty over that term, proposed replacing it by the words "without distinction of any kind as to ...". In support of the suggestion by Cape Verde, the representatives of the United States and Australia suggested formulating that phrase to read "without distinction of any kind such as ...". The Working Group agreed to that suggestion.

135. The representative of Morocco placed on record that her delegation's acceptance of article 1 was subject to a satisfactory agreement concerning article 2.

136. At its 10th meeting on 7 June 1985, the Working Group concluded its discussion on a text for article 1 on the assumption that a generally acceptable understanding had been reached. However, in the discussion of the Working Group's draft report, it appeared that this was not the case. The Working Group would therefore resume its discussion on article 1 at its next session. The text of article 1 as it stood read as follows:

"Article 1

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

Article 2.1

137. From its 10th to its 14th meetings from 7 to 12 June 1985, the Working Group considered a text for article 2.1 on the basis of article 2.1 provisionally agreed upon at first reading contained in document A/C.3/39/WG.1/WP.1, reading 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.]"

138. At the beginning of the debate, the representative of Colombia placed on record that the reference to the definition of the term "migrant workers" envisaged in Decision 116 setting up the Andean Labour Migration instrument contained in the comments of his Government and reproduced in document A/C.3/40/WG.1/CRP.2 should be interpreted as a formal submission of his Government for a definition for migrant workers. After hearing the opinion of different delegations, who pointed out that the definition was not within the context of the discussions related to the subject, the representative of Colombia requested that the proposed definition be included in the report of the Working Group. Article 1 (f) of that Decision contains the following definition:

"The term 'Migrant worker' means any national of a member country who moves to the territory of another member country for the purpose of providing his services to an employer. This term covers the following categories:

- I. Skilled worker: a worker who has the vocational training or technical expertise to do a specific type of work.
- II. Frontier worker: a skilled or unskilled worker living near the frontier of a member country who, while maintaining his residence and family in the country of immigration, moves regularly and repeatedly to the frontier region of another member country.
- III. Temporary worker: a skilled or unskilled worker who moves to another member country to take up seasonal or temporary work or engage in other short-term economic activity".

139. Article 1 (g) of that Decision contains the following definition on undocumented workers:

The term 'Undocumented migrant worker' means any national of a member country who engages in lawful activities on his own account or under any other kind of contract of employment, in the territory of another member country, without proper official or travel documents which vouch for his nationality and legal residence in another member country".

140. At the same meeting the representative of Denmark, referring to her statement contained in paragraph 20 of the report of the Working Group (A/C.3/39/4), placed on record that her delegation had formally withdrawn her earlier proposal that the definitions in this Convention should be based on those used in the European Convention on the Legal Status of Migrant Workers. She added that her delegation's proposal for article 89 of the draft Convention was not intended to make reservations concerning agreed definitions possible, but rather to reservations regarding articles granting certain rights to certain categories of migrant workers. Article 89 is not intended to be a general reservations clause. She added that the idea behind her proposal was that the whole article should be reviewed and specified, if possible, at a later stage of the work when the text had been tightened up during the second reading. In this connection she referred to her statement contained in paragraph 79 of the Working Group's report A/C.3/39/4. She concluded that it was the hope of her delegation that after the second reading it would not be necessary to have article 89 in the final clause of the Convention.

141. During the consideration of this article, the representative of Sweden, Finland, Denmark, Morocco, Yugoslavia, Greece and Australia expressed their preference for basing the discussion of the text for article 2.1 on the left hand column of the proposal. The representative of Sweden stated the proposed article addressed two issues, on the one hand the question of "self-employed worker" which may create problems to some delegations and referred to the definition sponsored by his delegation in document A/C.3/39/WG.1/CRP.4; on the other hand there was the question of the term "seek to engage" which various delegations did not wish to include in the Convention. The representative of the Federal Republic of Germany, stated that he could not favour the inclusion of "self-employed workers" to be protected under this Convention. Regarding the expression "seek to engage", the representatives of Sweden, Finland, Morocco, Cape Verde, Greece and Italy stressed that the application of the Convention should not be extended to persons having the mere intent to migrate. Therefore they supported the deletion of the expression "seek to engage". The delegation of India, in a spirit of co-operation agreed not to insist on maintaining the expression. He explained that the idea of covering people in the process of migrating was important for his delegation. He thus proposed to replace it by the term "intends to depart". He said that he would submit a revision of their proposal.

142. After some discussion the Working Group agreed to delete the words "[seeks to engage]".

143. Turning to the question of "remunerated activity", the representative of Cape Verde suggested that he would prefer a broader definition and proposed using "remunerated labour relation" instead. He therefore suggested a definition reading, "the term 'migrant worker' refers to any person in a state of which he is not a national in a remunerated labour relation". In this connection the representative of the Federal Republic of Germany also suggested a formulation reading "engaged, in a State of which he is not a national, in an economic activity which as such is not contrary to the laws of that State".

144. The representative of Australia sought clarification as to whether the word "licit" was used in the text with reference to criminal activity. In this connection the representative of the United States suggested that gambling would, in some cases, be considered a licit activity and wondered whether a person engaged in gambling should be covered in this Convention.

145. At its 11th meeting on 10 June 1985, the Working Group had before it a revised text for the right column of article 2.1 submitted by the delegation of India as follows:

"For the purpose of this Convention, the term 'migrant worker' means any person who has departed or is in the process of departing from the State of origin or normal residence to the State of employment of which he is not a national, and is to engage, is engaged or has been engaged in any legally permissible economic activity or remunerative work for an employer or on his own account."

146. At the same meeting, the Working Group also had before it a new proposal for article 2.1 and article 2.2 (g) sponsored by the delegations of Finland, Greece and Italy and which was introduced by the representative of Finland. The representative of Finland, on behalf of the sponsors, stated that with a view to facilitating the work of the Working Group, delegations had not included the notion of self-employed workers in paragraph 1, but since they felt that this category should be covered by the Convention they had at the time wished to submit a concrete proposal for an additional subparagraph 2.2 (g). The texts which are interrelated 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 be engaged, is engaged or has been engaged in a remunerated activity which activity, as such, is not contrary to the laws of that State,"

"Article 2.2 (g)

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

(The rights given to self-employed migrant workers are to be specified in Part IV of the Convention.)

147. After the introduction of this proposal, the Chairman invited the Working Group to try to confine itself to article 2.1 as article 2.2 (g) will be discussed when the Working Group reached paragraph 2 of Article 2.

148. Regarding the proposal submitted by India and the proposal submitted by Finland, Greece and Italy, the representative of the Netherlands stated that as the definitions are naturally linked with the remaining part of the draft Convention, his delegation reserves its rights to come back to the definitions.

149. With reference to the new proposal by India, the delegations of Italy, Australia, France, Cape Verde and Morocco stressed that for practical considerations the definition should not cover persons who are in the process of departing from the State of origin as laid down in the proposal by India. They appealed to the representative of India to consider deleting that phrase.

150. At the 12th meeting, the Indian delegation was of the view that "self-employed" persons should be covered in the definition of "migrant workers". In view of the fact that Sweden proposed the same to be included in article 2 (2) (g) and was supported by some other delegations, the Indian delegate agreed to withdraw his proposal to mention "self-employed" in article 2 (1) on this understanding. He proposed inserting the words "of employment" after the word "State" in the text submitted by Finland, Greece and Italy. The Indian representative subsequently agreed not to press for the inclusion of the words "of employment" after the word "State".

151. The representative of the Byelorussian SSR, suggested that the whole article should be restructured by starting it with a phrase stating "with the exception of cases referred to in paragraph 3 of Article 2 of the present Convention, the term 'migrant worker' refers to ...". In this connection, the representative of India, supported by the USSR, stated that it would be useful to have in paragraph 2 (1) an introductory phrase stating "For the purpose of this Convention, ...". The representative of the USSR proposed adding the word "legal" between "engaged in" and "remunerated". Regarding the proposed word "legal", the representative of France suggested to replace it by a phrase referring to an activity which in itself is not prohibited to the nationals of the State of employment.

152. Regarding the proposed subparagraph 2.2 (g), the representative of Cape Verde, while recognizing the value of a definition of "self-employed workers", proposed replacing the word "essentially" by the word "exclusively". He pointed out that the reference to "under a contract of employment" could be construed as meaning that the only way through which the employment of a migrant worker could take place would be through a contract of employment. Therefore, a different expression should be found to avoid the idea in accordance with which there is no other form of engagement of a migrant worker other than through a contract of employment. The representative of Morocco proposed that the subparagraph on self-employed workers should contain a clause excluding persons engaged in an economic activity as employers. The representative of Mexico stated that the proposed subparagraph should be studied in conjunction with the proposed exclusions under paragraph 3.

153. With regard to the proposed text for article 2.1 submitted by the delegations of Finland, Greece and Italy, the representative of the United States expressed her delegation's concern regarding the broad scope of the definition arising from the use of the phrase "is to be engaged, is engaged, or has been engaged ...". She felt that this could lead to problems in certain situations and cited, as an example, the person who works in a State of which he is not a national, leaves that State, and later returns as a tourist. Under the proposed definition, that tourist would still be a migrant worker entitled to protections under the Convention because he "has been engaged" in a remunerated activity in a State of which he is not a national.

154. At its 12th meeting on 10 June 1985, the Working Group agreed that the beginning of paragraph (1) of article 2 should read as follows:

"For the purpose of this Convention ..."

155. At the beginning of the 13th meeting on 11 June 1985, the Chairman read out paragraph (1) as it stood at that point before the Working Group, incorporating the proposals made:

"For the purpose of this Convention, the term 'migrant worker' refers [except as otherwise provided hereafter] to any person who, in a State of which he [or she] is not a national, is to be engaged, is engaged or has been engaged in a [legal] remunerated activity, [which activity, as such, is not contrary to the laws of that State] [or international law]."

The suggestion was made to replace the words "activity, as such," by the words "of itself".

156. Turning to the amendment proposed by the Soviet Union (para. 152 above) to insert the word "legal" before the words "remunerated activity" and to delete the rest of the sentence, the Working Group discussed the meaning of the expression "legal remunerated activity". Several delegations explained that in their legislation an otherwise legal activity would be considered as illegal if carried out by an alien without a work permit. The expression "legal remunerated activity" might thus exclude the application of Part II of the Convention to non-documented workers. It was pointed out that the definition should also cover non-documented migrant workers, and in order to avoid excluding them from the protection of the Convention on a restrictive interpretation, it would, in their view, appear necessary to include a reference to the legality of the activity.

157. In the course of the debate several suggestions were made to replace the last part of paragraph (1) by the words "remunerated activity, permitted by that State" or "remunerated activity permitted by the laws of that State" or "remunerated activity which is not prohibited to nationals of that country". The suggestion was also made to use the word "licit" instead of "legal" before the word "activity".

158. The representative of Italy felt that the purpose of the above-mentioned proposals (para. 147 above) amounted to excluding from the scope of the Convention activities which violated the ordre public of States. He pointed out, however,

that the need had not been felt to include a similar safeguard in the relevant ILO Conventions. Laws of ordre public applied in any case, equally to nationals and aliens, and that was obvious in any legal system. He therefore suggested to omit both the word "legal", or any expression to that effect, and the remaining words after the expression "remunerated activity".

159. He also suggested that, if an explanatory report were to be attached to the draft Convention, a formulation along the lines of the following text should be included with regard to the definition in paragraph (1) of article 2:

"While defining the term 'migrant worker' in this way, it was clearly understood that activities contrary to rules of ordre public in the State where such activities took place were out of the scope of this Convention."

160. The representative of the Federal Republic of Germany stated that, if such an explanation was attached to paragraph (1) of article 2, he could accept the Italian proposals (para. ____ above). The representative of the Soviet Union said that, in a spirit of compromise, he could go along with that proposal.

161. The representative of Cape Verde, referring to his proposal (para. 153 above), said that in interpreting and applying paragraph (1) of article 2, account must be taken of the relevant and generally accepted norms and principles of international law and of jus cogens in particular. Thus, for example, mercenaries who are unacceptable in international law should not fall under the protection of the Convention. At the suggestion of the Chairman that the position of the representative of Cape Verde should be reflected in the report as the understanding of the Working Group, the representative of Cape Verde, in a spirit of compromise, did not insist on his proposal.

162. With regard to the expression "except as otherwise provided hereafter", by which the Chairman had wished to reflect a proposal submitted by the Byelorussian SSR, it was suggested that the idea contained in that proposal could perhaps be rendered by the expression "except as provided for in paragraph (3) of this article". The representative of the Byelorussian SSR stated that he could accept such a formulation. In that connection, some representatives stated that cross-references to other provisions in the same article would be superfluous and that article 2 should be read as a whole.

163. Explaining the reasoning behind his proposal, the representative of the Byelorussian SSR stated that the use of the word "any" before the word "person" would, if left unqualified, exclude the exclusions mentioned in paragraph (3). In other international instruments, exclusion followed immediately after the definition, which was not the case in the present draft Convention. In that connection, the representative of Finland suggested that the order of paragraphs (2) and (3) could be reversed. The representative of Italy suggested that paragraph (1) could start with the expression "subject to paragraphs (2) and (3) of this article". The representative of the Federal Republic of Germany suggested that the words "any person" could be replaced by the words "a person", which were in fact used in article 11 of ILO Convention No. 143.

164. In light of the debate, the Chairman suggested the compromise formulation "a person" which was accepted by the Working Group at its 13th meeting.

165. At the same meeting, the representative of Australia introduced his proposal to add the words "or she" after the word "he" and said that it was a matter of principle to introduce this terminology which was in fact becoming standard practice at the United Nations. During the debate some representatives pointed out that although it was beyond doubt that the Convention applied equally to men and women migrant workers, the use of the words "or she", if used throughout the Convention, might pose stylistic difficulties and problems during the translation of the text into other languages.

166. In light of the discussion, the Working Group agreed to use the words "or she" only in the definition, in paragraph (1) of article 2, with the understanding that wherever the word "he" appeared in subsequent provisions those provisions applied equally to women migrant workers.

167. The representative of the United States requested clarification of the expressions "is to be engaged" and "has been engaged", since, as he pointed out, it had to be clear when one started and when one stopped being a migrant worker. He also made a suggestion to put the expression "in a State of which he is not a national" at the end of paragraph (1).

168. With regard to the expression "is to be engaged" the Chairman explained that it was the understanding of the Working Group from previous discussions that a work contract with an employer or a similar document would constitute the starting point for the recognition of a person as a migrant worker, even before that person left his country of origin or normal residence. As to the expression "has been engaged", the Chairman said that it referred to a person who had left the country where he worked as a migrant worker and who, for certain rights provided for under the Convention, he or she still continued to be considered as a migrant worker.

169. In that connection, the example was brought up of a person who had contracted an occupational disease which would manifest itself after the person had left the country of his employment as a migrant worker, and it was pointed out that such a person would have rights under the Convention. Other examples mentioned were the migrant workers unemployed who would maintain their quality as migrant workers while looking for work; or the person who was a victim of a work accident and had to stay in the country where he had worked as a migrant worker in order to receive a pension for his invalidity; or the person who was on temporary leave from the country where he or she worked as a migrant worker. The expression "has been engaged" would apply to all those persons. Moreover, it was pointed out that the definition as such did not accord rights and that it would be clear from the subsequent provisions of the Convention which rights would be granted to whom.

170. The representative of the United States said that his delegation did not object to the idea of granting specific rights to persons who had been engaged in a remunerated activity but that the question was only whether this idea should be included in the definition. In light of the explanations given, with respect to the question of when the status of migrant workers begins and ends, he could go along with the proposed definition with the understanding that the Working Group could revert to it if it encountered difficulties in applying the definitions in the substantive provisions.

171. The representative of Australia stated that his delegation recognized that migrant workers should have some rights after they left the State of employment, but that those rights had to be specific. His delegation could go along with the proposed definition with the understanding that the Working Group would cautiously examine such specific rights during the elaboration of the relevant articles.

172. The representative of the Federal Republic of Germany submitted the following interpretation of the expression "has been engaged" which he also suggested to be included in an explanatory report, if such a report were eventually adopted by the Working Group:

"The use of the expression 'has been engaged' does not prevent the status of a migrant worker from ending with the permanent cessation of the activity mentioned in article 2 (1). This expression is used solely in order to take into account the fact that certain rights may continue to derive from the situation of a migrant worker, even when that situation has ended."

173. At its 14th meeting on 11 June 1985, the Working Group adopted paragraph (1) of article 2 as follows:

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

174. With regard to paragraph (1) of article 2, it was the understanding of the Working Group that activities contrary to the rules of ordre public in the State in which they took place were out of the scope of the Convention. It was further the understanding of the Working Group that general international law and jus cogens in particular were binding upon States and had to be taken into account when defining the scope of the Convention.

175. However, the delegation of Mexico pointed out that the question of the inclusion of a reference to the licit or lawful character of the economic activity would ultimately depend on whether it was consistent with the rest of the wording of the Convention.

Article 2, paragraph 2

176. The Working Group considered article 2, paragraph 2, at its 14th, 15th and 16th meetings on 11 and 12 June 1985 on the basis of the text provisionally agreed upon at first reading contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"2. For the purpose of this Convention:

"(a) Frontier workers are migrant workers when they engage in work in one State but retain their permanent residence in a neighbouring State to which they normally return every day or at least once a week;

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

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

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

"(e) Itinerant workers are migrant workers when, having their permanent residence in one State, they have to go for purposes of their occupation to another State for a short period;

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

177. At the 11th meeting on 10 June 1985, in the course of the discussion on article 2, paragraph 1, the delegations of Finland, Greece and Italy had submitted a new subparagraph (g) (see para. ___ above).

178. The representative of the Federal Republic of Germany stated that, in his delegation's view the categories described in paragraph 2 of article 2 should be held outside the field of application of the Convention.

Article 2, paragraph 2, introductory phrase

179. The Working Group considered the introductory phrase of paragraph 2 at its 14th and 15th meetings on 11 and 12 June 1985 on the basis of the following text:

"For the purpose of this Convention,"

180. The representative of the United States said that, in the understanding of his delegation, paragraph 2 referred to part IV of the Convention and suggested that the introductory phrase should read:

"For the purpose of part IV of this Convention,"

181. Several delegations expressed the opinion that such reference to part IV would be superfluous. Moreover, it was not just to part IV that the categories described in paragraph 2 applied but also to other parts to which reference was made in part IV itself. The representative of the Netherlands suggested the following formulation:

"The rights of the specific categories mentioned in paragraph 2 of article 2 are covered in part IV."

182. In light of the discussion, the Chairman suggested the following text for the introductory phrase:

"For the purpose of relevant parts of this Convention,"

183. The representative of the United States suggested an amendment to the Chairman's proposal which would also harmonize the wording in the introductory phrase of paragraph 3 of article 2. The text suggested by the United States read as follows:

"For the purposes of the relevant parts of this Convention, the term 'migrant workers' includes:"

184. The representative of the Netherlands suggested amending the above-mentioned text by starting the sentence with the expression "Subject to part IV, for the purpose of this Convention ...".

185. The representative of Finland reminded the Group that the definitions of the special categories of migrant workers did not imply any rights as such but should be seen exclusively as a conceptual "dictionary" which could be referred to when a particular term appeared in the substantive parts of the Convention.

186. The representative of Yugoslavia, at the 14th meeting, proposed the following text:

"For the purpose of this Convention, the term 'migrant worker' includes the following particular categories:"

187. After informal consultations the Working Group adopted, at its 15th meeting on 12 June 1985, the following compromise text for the introductory phrase of paragraph 2 of article 2:

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

188. It was also agreed that, given the above-mentioned formulation in the introductory phrase, the reference to "migrant workers" would be deleted in the subsequent subparagraphs.

Article 2 (2), subparagraph (a)

189. At its 14th and 15th meetings on 11 and 12 June, the Working Group also discussed the definition of the term "frontier workers" on the basis of the following text:

"(a) Frontier workers are migrant workers when they engage in work in one State but retain their permanent residence in a neighbouring State to which they normally return every day or at least once a week;"

190. The delegation of Mexico suggested that the words "every day or at least once a week" should be deleted and substituted by the word "periodically", which would lend itself to a universal application of the term "frontier workers".

191. On the suggestion of the United States, the Working Group agreed to substitute the word "maintain" for the word "retain", and on the suggestion of Italy the Working Group agreed to use the expression "habitual residence" instead of "permanent residence".

192. With regard to the expression "neighbouring State", several delegations pointed out that it would be necessary to make clear in the text that the place of habitual residence and/or the work place must be situated in the vicinity of the border of the State concerned.

193. The delegation of Italy stressed that the notion of "periodically" or "regularly" did not cover the de facto situation enabling the worker, while residing in the territory of one State, to go to work in the territory of another State and return home every day or at least once a week.

194. The delegation of Colombia indicated that, in many countries, workers travelling long distances between their habitual residence and their work place, would qualify as "frontier workers", even if neither would be situated near the frontier.

195. The Chairman suggested that the proposal to include in this Convention the notion of frontier workers had been prompted by their exclusion from the application of other international conventions concerning migrant workers. The proposed definition, however, did not seem to cover the actual situations in all parts of the world. He therefore proposed that, instead of trying to bring together in one definition elements that were not equally relevant to all situations or all regions, the Working Group should elaborate two definitions, one based on a narrow, and another one on a broad concept of frontier workers, leading eventually to a clear understanding which substantive provisions would become applicable to one and the other category.

196. Having accepted such an approach, and on the understanding that the Working Group would be presented with proposals for an additional definition and substantive provisions, the Working Group continued its discussion on the following text:

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

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

197. In the course of the discussion, the representative of Cape Verde drew the attention of the Working Group to the effect of the new wording of the introductory phrase of paragraph 2 on the proposed definition in subparagraph (a), whereby the intended restrictions could easily be circumvented. He therefore suggested that the introductory phrase be read as follows:

"For the purposes of the relevant provisions of this Convention, the term 'frontier worker' refers ...".

198. In the light of this interpretation, the Working Group felt that it should reconsider the introductory phrase adopted for paragraph 2. The United States representative said that he would circulate at the next meeting of the Group a written proposal for a reorganized article 2 incorporating a response to the point raised by the representative of Cape Verde, as well as addressing the points raised by his delegation and others with respect to the distinction between permanent and temporary workers.

199. At its 17th meeting on 14 June 1985, the Working Group adopted the present report.

IV. PARAGRAPHS OF THE PREAMBLE AND ARTICLES ADOPTED ON SECOND READING

Preamble

The States Parties to this Convention,

(1) Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women,

(2) Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Conventions concerning Migration for Employment (No. 97) and Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143) and the Recommendations concerning Migration for Employment (No. 86) and Migrant Workers (No. 151),

(3) Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

(4) Recalling the Convention on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

(5) Recalling also that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, as well as the expertise and experience of the said Organisation in matters related to migrant workers and their families,

/...

(6) Recognizing the importance of the work carried out in connection with migrant workers and their families in various organs of the United Nations system, in particular in the Commission on Human Rights, the Commission for Social Development, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization and in various regional organizations,

(7) Recognizing the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and their families as well as the importance and usefulness of bilateral and multilateral agreements in this field,

(8) Realizing the importance and extent of the migration phenomenon which involves millions of people and affects a large number of States in the international community,

(9) Aware of the impact of the flows of migrant workers on States and people concerned and desiring to establish norms which may contribute to harmonize the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and their families.

(10) Considering the situation of vulnerability in which migrant workers and members of their families frequently find themselves due to, among other things, their absence from the State of origin and to the difficulties they may encounter arising from their presence in the receiving State,

(11) Convinced that the rights of migrant workers and their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

(12) Taking into account the fact that migration is often the cause of serious problems for the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

(13) Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration, and convinced therefore that appropriate action should be encouraged in order to prevent and suppress clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

(14) Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers, and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

(15) Considering further that recourse to the employment of migrant workers who are in an irregular situation will also be discouraged if fundamental human rights of all migrant workers are more widely recognized, and moreover, that granting certain additional rights to migrant workers and their families in a regular situation will encourage all migrants and employers to respect and to comply with the laws and procedures established by the States concerned,

(16) Convinced therefore of the need to bring forth the international protection of the rights of all migrant workers and their families reaffirming and establishing basic norms in a comprehensive Convention which could be applied universally,

Have agreed on the following articles:

PART I

Scope and definitions

...

Article 2.1

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