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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

Working paper submitted by the United States: a proposal relating to
article 2 of the draft International Convention on the Protection of
the Rights of All Migrant Workers and Their Families

Introduction

In response to the Working Group's decision during its last session that the current chapeau and structure of article 2, paragraph 2, contain logical and grammatical flaws that should be addressed further, and its agreement that the definitions contained in the Convention must take into account differing regional situations, the United States proposal for the reorganization of article 2 aims at: (1) resolving the structural problems of the article as it now stands, and (2) addressing the need of the United States and other delegations for a distinction between permanent and temporary migrant workers.

The United States proposal would restructure article 2 as follows:

- As in the current Working Group text, the basic definition of "migrant worker" remains in paragraph 1.
- A new paragraph 2 incorporates paragraph 3 and states that the term "migrant worker" (a) includes documented and non-documented migrant workers, as defined in article 4; (b) includes permanent and temporary migrant workers - now defined in this article; and (c) excludes the specific categories of persons listed in paragraph 3.

- Finally, paragraph 2 becomes a new article 2 bis, which, pursuant to the discussions of the Working Group, generalizes the definitions in the paragraph so that they constitute a dictionary of types of workers who, if they meet the definition in paragraph 1, are migrant workers.

Apart from the incorporation of a distinction between permanent and temporary migrant workers, this proposal deals only with the organizational structure of article 2. It is not intended to reflect any of the other substantive concerns of the United States with regard to the article, which we will speak to as the Working Group proceeds with its consideration of the draft Convention.

United States proposed reorganization of article 2

1. For the purposes 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.

2. For the purposes of this Convention:

(a) The term "migrant worker" includes migrant workers who are documented or in a regular situation (lawful status), as defined in article 4 (a), and migrant workers who are non-documented or in an irregular situation (unlawful status), as defined in article 4 (b);

(b) The term "migrant worker in a regular situation (lawful status)" includes both permanent migrant workers and temporary migrant workers:

(i) Permanent migrant workers are migrant workers who have been admitted to a State of which they are not nationals for an unrestricted period of time;

(ii) Temporary migrant workers are migrant workers who have been admitted to a State of which they are not nationals for a restricted period of time;

(c) The term "migrant worker" excludes:

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

(ii) Persons [performing official functions] employed on behalf of a State outside its territory for the execution of programmes of co-operation for development agreed with the receiving State and whose admission and status are regulated by specific international agreements or conventions;

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

[(iv) Persons whose main earnings do not originate from the State of employment [receiving State];]

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

[(vi) Refugees and stateless persons;]

[(vii) Students and trainees.]

Article 2 bis

For the purposes of this Convention:

(a) Frontier workers are persons who are engaged 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;

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

(c) Seafarers are persons who are engaged in a remunerated activity on board a vessel other than a warship;

(d) Workers on offshore installations are persons who are engaged in a remunerated economic activity on offshore installations;

(e) Itinerant workers are persons who, having their permanent residence in one place, have to go for purposes of their occupation to another place for a short period;

(f) Project-tied workers are persons who are engaged in a remunerated activity for a period of time on the basis of a work contract with an (enterprise or) employer carrying out a specific project that by its nature is limited in time.
