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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Report of the open-ended Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

INTRODUCTION

1. The Working Group on the Drafting 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 40/130 of 13 December 1985, the General Assembly, inter alia, took note with satisfaction of the reports of the Working Group (A/C.3/40/1 and A/C.3/40/6) and, in particular, of the progress made by the Working Group on the drafting of the draft Convention in second reading, and decided that, in order to enable it to complete its task as soon as possible, the Working Group should again hold an inter-sessional meeting of two weeks' duration in New York, immediately after the first regular session of 1986 of the Economic and Social Council (see para. 3). The 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 continue the drafting of that Convention during the inter-sessional meeting to be held in the spring of 1986 as well as to transmit the results obtained at that meeting to the Assembly for consideration during its forty-first session. The 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

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their co-operation with the Working Group. Further, the Assembly decided that the Working Group should meet during the forty-first session of the General Assembly, preferably at the beginning of the session, to continue the second reading of the draft Convention.

3. At its fortieth resumed session, the General Assembly, in view of the financial situation facing the Organization, decided, inter alia, that the inter-sessional meeting scheduled for the spring of 1986 should be replaced by the meeting of the Group as a sessional committee of the Third Committee of the General Assembly. Accordingly, the Working Group's inter-sessional meeting in the spring of 1986 did not take place.

4. Thus in accordance with paragraphs 3 and 4 of General Assembly resolution 40/130 and prior to the forty-first session of the Assembly, the Secretary-General transmitted the report of the Working Group on its work during the fortieth session of the General Assembly (A/C.3/40/6) to Governments, competent organizations of the United Nations system and international organizations concerned.

5. 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 inter-sessional meeting from 11 to 22 May 1981; (c) a second session during the thirty-sixth session of the Assembly from 12 October to 20 November 1981; (d) a second inter-sessional meeting from 10 to 21 May 1982; (e) a third session during the thirty-seventh session of the Assembly from 18 October to 16 November 1982; (f) a third inter-sessional meeting from 31 May to 10 June 1983; (g) a fourth session during the thirty-eighth session of the Assembly from 27 September to 6 October 1983; (h) a fourth inter-sessional meeting from 29 May to 8 June 1984; (i) a fifth session during the thirty-ninth session of the Assembly from 26 September to 5 October 1984; (j) a fifth inter-sessional meeting from 3 to 14 June 1985; (k) a sixth session during the fortieth session of the Assembly from 23 September to 4 October 1985; and (l) a seventh session during the forty-first session of the Assembly, from 24 September to 3 October 1986.

6. At its 1st meeting, on 24 September 1986, the Working Group unanimously elected Mr. Juhani Lonnroth (Finland) as its Vice-Chairman to replace Mr. Bengt Lidal (Sweden) who could no longer attend the sessions of the Working Group.

7. In pursuance of General Assembly resolution 40/130, the Working Group met at United Nations Headquarters from 24 September to 3 October 1986 under the chairmanship of Mr. Antonio González de León and the vice-chairmanship of Mr. Juhani Lonnroth. It held 15 meetings with the participation of delegations from all regions. Observers from the International Labour Organisation (ILO) and the Economic Commission for Africa (ECA) also attended the meetings.

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

(a) Report of the open-ended Working Group during the fortieth session of the General Assembly (A/C.3/40/6);

(b) Text of the preamble and articles of the draft 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);

(c) Proposed text for article 4 submitted by Finland, Italy, Norway, Portugal, Sweden and Yugoslavia (A/C.3/41/WG.1/CRP.1);

(d) Texts of the articles adopted by the Working Group during the forty-first session of the General Assembly (A/C.3/41/WG.1/CRP.2);

(e) Texts of the articles adopted by the Working Group during the forty-first session of the General Assembly (A/C.3/41/WG.1/CRP.3).

9. For reference the following documents were available to the Working Group:

(a) Previous reports of the Working Group: (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; A/C.3/38/5; A/C.3/39/1; A/C.3/39/4 and Corr.1 (English only) and A/C.3/40/1);

(b) 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);

(c) Working paper concerning self-employed migrant workers submitted by Finland, Greece, India, Italy, Norway, Spain and Sweden, subsequently joined by Portugal, containing proposals for additional provisions in article 2 and part IV of the draft International Convention (A/C.3/40/WG.1/CRP.6);

(d) Letter dated 21 August 1985 from the Vice-Chairman of the open-ended Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families addressed to the Chairman of the Working Group (A/C.3/40/WG.1/CRP.7);

(e) Working paper submitted by the United States of America containing a proposal relating to article 2 of the draft International Convention (A/C.3/40/WG.1/CRP.8);

(f) Proposal by Australia for new subparagraph of article 2.2 of the draft International Convention (A/C.3/40/WG.1/CRP.9);

(g) Working paper submitted by Denmark: revised proposal to replace article 89 in document A/C.3/39/WG.1/WP.1 (A/C.3/40/WG.1/CRP.11);

(h) 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);

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

(j) 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);

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

(l) 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 (A/C.3/38/WG.1/CRP.5).

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

10. 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.

PART I

Scope and definitions

Article 1 (2)

11. The Working Group considered a text for article 1 (2) from its 2nd to its 6th meetings from 24 to 26 September on the basis of article 5 contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"Article 5. Application during the process of migration

"The rights, as set forth in this Convention, shall be recognized and guaranteed during the entire migration process, that is, during the preparation for emigration, on leaving from the State of departure, in the course of transit through a State, during the journey, during the entire period of stay, residence, employment or work in the State of employment and on return to the State of origin or the State or normal residence."

12. Upon the suggestion of the Chairman, the Working Group agreed to delete the title as none of the articles of the draft Convention had a title.

13. During the consideration of this article, the representative of the Federal Republic of Germany questioned the usefulness of having such a clause in that part of the Convention. Referring to article 27 of the Convention, he pointed out the difficulties that might arise in the application of the provisions of article 27 as concerned the question of social security benefits, for example in a State of transit. He therefore proposed its deletion or replacing it by an article guaranteeing the rights of migrant workers in the State of transit wherever applicable and which would be placed between articles 8 and 25 or after article 36.

14. The representative of Yugoslavia stressed that it was necessary to maintain the article in the Convention as certain guarantees were needed also in the State of transit.

15. In support of maintaining the article, the representative of Tunisia suggested that the concern raised by the representative of the Federal Republic of Germany could be solved by specifying which provision in the Convention would be applicable in the State of transit.

16. In pointing out the difficulty faced by his delegation that the rights of migrant workers and members of their families should be guaranteed during the whole process of migration, the representative of France suggested including a clause in the article stipulating "unless otherwise provided by law".

17. The representatives of Algeria, Senegal, Morocco and Portugal, noting that the article did not deal with a definition, insisted on maintaining it in a more appropriate part of the Convention. The representative of Senegal supported having a safeguard clause stating "unless otherwise provided by the Convention".

18. In that connection, the representative of the Union of Soviet Socialist Republics expressed the view that the article should be maintained as its provisions were advocating State obligation.

19. The representative of Italy stated that in his view it would have been more appropriate to place such a general provision either in the preamble or at the beginning of the operative part. He therefore suggested reformulating it to read:

> "The present Convention shall apply during the entire migration process and the relevant rights shall be guaranteed during the preparation for emigration, on leaving from the State of departure, in the course of transit through a State, during the journey, during the entire period of stay, residence, employment or work in the State of employment and on return to the State of origin or the State of normal residence."

20. The representative of Australia voiced his concern about the general character of the article. He thought it would be helpful for the article to be more explicit in attributing obligations to the States concerned.

21. As the majority of the delegations agreed that the article in its substance could not be considered as part of the definitions, the Working Group decided to include it in article 1 as paragraph 2.

22. The representative of Tunisia stated that the text should mention migrant workers and members of their families.

23. The representative of France expressed similar views. He added that the definition of the term "members of their families" would be acceptable to his delegation only in so far as it applied to part II of the Convention.

24. While supporting the text of the paragraph, as revised, the representative of the USSR emphasized that the original wording of the paragraph was intended to stress rights to be recognized and guaranteed.

25. The representative of Ghana stressed the need of having the entire migration process applicable both to the migrant worker and to his family. She emphasized that that was the major preoccupation of third-world countries since families of migrant workers from the third-world countries were often subjected to harassment during the migration process.

26. After a brief discussion the Working Group adopted paragraph 2 of article 1 as revised, as follows:

Article 1

...

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of normal residence.

Article 4

27. The Working Group considered a text for article 4 on the basis of article 3 contained in document A/C.3/39/WG.1/WP.1 at its 1st to its 6th meetings from 24 to 26 September 1986. The text of article 3 read as follows:

"For the purposes of this Convention, the term 'members of the family' includes the spouse [or the companion who lives matrimonially with the worker if such a relationship is recognized by the laws] [governing the personal status of the worker] [of the State of employment or the State of origin], [the dependent [minor, unmarried] children], [the dependent parents of the worker or the spouse] and other persons who are recognized as members of the family for the purposes of this Convention by the relevant laws and regulations of the State of employment or relevant bilateral or multilateral agreements between the States Parties concerned."

28. During the consideration of this article and in view of its importance and complexity, various delegations made general statements on its substance and philosophy.

29. With reference to the provisions of the article relating to the concept of the family and because of the fact that the concept of the extended family continued to be very prominent in African societies, the representative of Morocco requested that a document circulated to certain participants which dealt with this concept, be made available to the Working Group because of its relevance to the subject-matter.

30. In reply to that request, the Chairman of the Working Group asked the representative of the Economic Commission for Africa (ECA) to present the substance of that document to the Working Group.

31. The representative of ECA explained that the document under reference quoted, from a cyclostyled document published by the International Council on Social Welfare (ICSW) (see Family issues, June 1985), definitions of the nuclear family, the extended family and the modified extended family as follows:

"1. The nuclear family, refers to husband, wife and unmarried children residing in the same household. (The latter is a socio-economic unit consisting of individuals living together and sharing quarters and meals.)

"2. The extended family, referred to also as composite or joint family, includes three or more generations (grandparents, their married children and wives, their grand-children) as well as other relatives residing frequently in a common household, compound or neighbourhood. Extended families are a common form of family organization in traditional societies.

"3. The modified extended family, a common form of family organization in modern industrialized societies, refers to three or more generations residing in separate households, but maintaining bonds of affection, support and social interaction."

32. Reviewing the substance of the document under reference, he drew the attention of the Group to non-documented migration that could be provoked within the framework of the extended family, as well as to polygamy which was practised in Africa either on religious or on traditional grounds, and to its consequences for family reunion and for applicable inheritance laws. He also mentioned the right to cultural identity and its educational and social consequence , the right of the migrant worker to be informed of the legislations/regulations applicable in the prospective country(ies) of employment and the problems of second generation migrants.

33. The representative of Finland introduced a proposed text for article 4 sponsored by Finland, Italy, Norway, Portugal, Sweden and Yugoslavia. The delegation of India subsequently joined the sponsors as a co-sponsor. The text of the proposal which was reproduced in document A/C.3/41/WG.1/CRP.1, read as follows:

"Article 4

"1. For the purposes of this Convention the term 'members of the family' refers to:

"(a) The spouse or companion who has with the migrant worker a relationship which according to applicable law produces effects equivalent to marriage;

"(b) A dependent child of a migrant worker or of his spouse or companion;

"(c) The dependent mother and father of a migrant worker or of his spouse or companion;

"(d) Other persons who are recognized as members of the family by the relevant laws and regulations of the State of employment or relevant bilateral or multilateral agreements between the States Parties concerned."

34. While introducing this new proposal, the representative of Finland stressed that, in elaborating the text the co-sponsors had taken the utmost care to focus on defining concepts rather than dealing with rights, taking into account various aspects of cultural and traditional values. Bearing in mind the diversity of cultures and legislation as well as the difficulty in finding a unified definition of the concept of family, he emphasized that efforts had been made by the co-sponsors to draft a definition which would be as clear and precise as possible to avoid the pitfall of a broader definition which might result in preventing wider ratification of the Convention.

35. The representative of Yugoslavia suggested that in drafting the present part of the Convention, efforts should be made to take into account, as far as possible, all the relevant principles contained in the Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in which They Live, adopted by the General Assembly on 13 December 1985 and annexed to General Assembly resolution 40/144.

36. The representative of Italy recalled, that as far as definitions were concerned in the present part of the Convention, the purpose of the discussion should focus mainly on what was understood by the notion of the family of a migrant worker for the purposes of the Convention and not on the general concept of family.

37. With reference to the statement on the African concept of the "extended family", the representative of the Federal Republic of Germany pointed out that as migration for remunerated activity was conceived only as a transitory phenomenon and not a permanent one, there was a necessity, in his view, to keep a restricted definition of the family of a migrant worker.

38. The representative of the United States, pointing out the difficulties that often arose in federal States, within States, or between States in reaching a unified definition, cautioned that in drafting the article efforts should be made to see that the different laws would be applicable in the situation for which they were intended.

39. Considering the importance and implications of the provisions of the article for other parts of the Convention, the representative of Nigeria suggested deferring the discussion to a later stage and taking up other articles so as to enable the African Group to hold consultations with a view to coming up with an agreeable proposal.

40. As there was no objection to that proposal, the Chairman invited the Working Group to take up other articles pending the results of the consultations on article 4.

41. After some informal consultations the Chairman read a new proposal for article 4 as follows:

"Article 4

"1. For the purposes of this Convention the term 'members of the family' refers to:

"(a) The spouses or companions who have with the migrant worker a relationship which according to applicable law produces effects equivalent to marriage;

"(b) Dependent children of a migrant worker or of his spouse or companion;

"(c) The dependent mother and father of a migrant worker or of his spouse or companion;

"(d) Other persons who are recognized as members of the family by the relevant laws and regulations of the State of employment or relevant bilateral or multilateral agreements between the States Parties concerned."

42. With reference to the expression "the relevant laws and regulations" contained in the new proposal, the representative of Tunisia suggested using uniform terminology such as "applicable law", when speaking of "pertinent laws and regulations". He stressed that the expression "applicable law" was understood to mean the rules of conflict which permitted the application of foreign law.

43. After some further informal consultations among the interested delegations and after a lengthy discussion, the Working Group had before it a text which the Group agreed to adopt as article 4 of the Convention as follows:

Article 4

For the purposes of this Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship which, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

44. The representative of the Federal Republic of Germany stated that, to avoid hindering the consensus, his delegation had accepted the article as proposed after the consultations. However, his delegation would have preferred to retain the qualifying words "minor unmarried dependent".

45. The representative of the USSR expressed some doubts with respect to the interpretation of the term "applicable legislation", because at the beginning of the same article the words "applicable law" was used. However, he stated that he was ready to join the consensus.

46. The representative of the Netherlands stated that he had accepted the proposal on the "family" on the understanding that it concerned members of the family belonging to the common household of the migrant worker.

47. The representative of Australia stated that his delegation also preferred the use of the term minor unmarried children and reiterated the view of his delegation reproduced in paragraph 153 of the report of the Working Group (A/C.3/40/6) to the effect that his delegation supported the concept of a nuclear family and that the law applicable with respect to a migrant worker in the State of employment was the law of that State. The representative of the United States supported the position of the delegation of Australia with respect to the concepts of the nuclear family and applicable law.

48. The representative of Nigeria placed on record her delegation's reservation as regards the interpretation of the words "applicable law".

49. Regarding the expression "applicable law", it was the understanding of the Working Group that the recourse to the expression "applicable law" in the present article of the Convention was meant to include the rules of conflict which might permit the application of foreign law.

50. While supporting that explanation, the representative of France pointed out that in the French version the term "applicable law" should be translated by the words "loi applicable" instead of "législation applicable".

51. The delegations of Algeria, Morocco, Senegal, the Sudan, Iraq, Mauritania, Saudi Arabia, the United Arab Emirates, the Syrian Arab Republic and Jordan placed on record their formal reservations as regards the inclusion in article 4 of the draft Convention of the phrase "... having with them a relationship which according to applicable law produces effects equivalent to marriage", which was incompatible with the concept of family as defined by the legislation in force in each of those countries. It must be stressed that the concepts of marriage and family were the basic elements which constitute the fundamental group units of all societies, particularly in African and Arab countries and for Muslim communities where they remained the linchpin of the entire social structure. The sacred value of the ties of marriage and of family relationships and the rights which they conferred could not, therefore, in any circumstance be put on an equal footing with the situation envisaged by the above-mentioned phrase. Under the positive law of each of the above countries, any situation arising outside the scope of that definition and any relations contracted outside the legal ties of marriage were legally non-recognized and the effects thereof were void.

Article 5

52. The Working Group considered a text for article 5 at its 1st to its 3rd meetings on 24 and 25 September on the basis of article 4, contained in document A/C.3/39/WG.1/WP.1. The text of article 4 read as follows

"Article 4

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

"(a) Are considered as documented or in a regular situation [lawful status] if they have been granted the requisite permanent or temporary authorizations in respect of admission, [duration of] stay and employment [or economic activity];

"(b) Are considered as non-documented or in an irregular situation [unlawful status] if they have not been granted the authorizations of the State in whose territory they are, that are required by law in respect of admission, [duration of] stay or employment [or economic activity] or if they have failed [except for reasons beyond their control to comply with the conditions to which their admission, [duration of] stay or employment [or economic activity] are subject."

53. The representative of Morocco drew the attention of the Working Group to the French version of article 4 in document A/C.3/39/WG.1/WP.1 which did not correspond to the English version.

54. The correct French version of the article had been reproduced in paragraph 30 of the earlier report of the Working Group (A/C.3/39/4).

55. At the beginning of the discussion, the Chairman asked the representative of the United States whether he would insist on maintaining the terms "[lawful status]" and "[duration of]" in the article.

56. The representative of the United States explained that it was agreeable to his delegation to delete the terms "[lawful status]" and "[duration of]". He also suggested the deletion of the expression "as defined in the preceding articles", contained in the introductory phrase of the article, as, in his view, such an expression was superfluous. He questioned the use of the terms "non-documented" or "in an irregular situation" as they appeared to him to be internally redundant. The Working Group agreed to the first proposal, but with respect to the second proposal the Chairman explained that the General Assembly in its resolution 3449 (XXX) of 9 December 1975, had requested the United Nations organs and specialized agencies concerned to utilize in all official documents the term "non-documented or irregular migrant workers" to define those workers who illegally and/or surreptiously entered another country to obtain work.

57. The representative of the Federal Republic of Germany stated that the expression "are considered as documented or in a regular situation if they have been granted the requisite permanent or temporary authorization", as well as the phrase "are considered as non-documented or in an irregular situation if they have not been granted the authorization if the State in whose territory they are", needed to be given more precision in the text, as the word "authorization" could be given a broader interpretation excluding the notion of being in possession of a valid authorization for admission.

58. In an effort to accommodate the concern raised, the Chairman suggested that the expression could be replaced by the wording "if they possess documents governing their admission" or "if they hold documents ...".

59. The representative of the United States pointed out that the difficulty faced by some delegations, in that context, had been the possible interpretation of the expression "possess" to imply a physical possession. In that connection, the representatives of Italy cautioned that such an expression, at least in French, did not necessarily imply physical possession.

60. The representative of Australia, supported by the representative of the United States, proposed using the term "hold a valid authorization" in the singular and to delete the words "permanent or temporary".

61. As to the question whether the word "authorization" should be kept in the plural or singular, the representative of Italy noted that care should be taken not to imply a possibility of a diversity or multiplicity of authorizations. The representative of Morocco remarked that the word "authorization" was maintained in the singular in the English text and that therefore the French version should also be kept in the singular. The representative of the Federal Republic of Germany expressed his preference for maintaining the word "authorization" in the plural. The representative of Sweden suggested using both the plural and the singular and to reformulate the paragraph to read: "if they hold an authorization or authorizations".

62. Turning to the expression "the State in whose territory they are", the representative of the United States suggested that such an expression should be replaced by the term "State of employment" which had been used all along in the text of the draft Convention.

63. With reference to the instruments adopted by the Commission of the European Communities relating to the free circulation of workers, the representative of Italy stated that there was a need to consider including a safeguard clause at the end of the Convention, reflecting the expression "as required by the State in whose territory they are". The representative of Sweden expressed the view that such a safeguard was already embodied in the draft Convention. In that connection, the representative of Senegal said that provision should be made to enable States Parties to conclude bilateral or any other agreements in that field. With a view to safeguarding the obligations resulting from treaties in that field, the representative of Portugal stated that in her view the reference to necessary authorizations had an alternative connotation and not a cumulative one.

64. In underlining some of the problems which might face the States members of the Nordic Common Market where no individual work or residence permit was issued to nationals of those States and with a view to reaching an acceptable text, the representative of Finland proposed to divide subparagraph (a) into two subparagraphs reading as follows:

> "For the purpose of this Convention, migrant workers and members of their families:
>
> (a) Are considered;

(i) As documented if they are lawfully entitled to admission, stay and employment;

(ii) As non-documented without any such authorization."

65. The representative of Tunisia, while stating that he did not have any objection as regards the new proposal by Finland, pointed out that such a formulation might be superfluous and complicate the interpretation of the article.

66. The representative of the United States proposed using the term "if they are authorized by the manner provided by the legislation of the State of employment to enter, stay and to be engaged in employment in that State". The representative of France proposed rewording the phrase to read "if they are authorized or if they are exempted from such requirements by the legislation of the State of employment". The representative of Italy suggested using the expression "if they are entitled to admission, stay and employment pursuant to the legislation of the State of employment".

67. As the Working Group was nearing a consensus on article 5 and in order to speed up the progress of the Group, the Chairman suggested that a smaller group of interested delegations should hold consultations on the text and provide the Group with an acceptable text.

68. At its 3rd meeting, on 25 September, the Working Group had before it a revised text for article 5 formulated as a result of consultations by the delegations concerned. The text read as follows:

"Article 5

"For the purposes of this Convention, migrant workers and members of their families:

"(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State, including its international obligations;

"(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in paragraph (a)."

69. The representatives of India, Morocco, Tunisia and Yugoslavia voiced their concern about the deletion of the expression "[except for reasons beyond their control]". In that connection, the representative of the United States said that it would be preferable to leave it to the State of employment to determine the reasons beyond their control, otherwise such an expression would have serious implications in the Convention. The representative of the Netherlands expressed the same views.

70. The representative of the USSR stated that the proposed text was acceptable to his delegation. However, he would have preferred to replace the words

"international obligation" by the words "international agreements to which that State is a party". The Working Group agreed to that proposal.

71. The representative of the United States suggested adding a comma after the words "remunerated activity" in subparagraph (a).

72. At the same meeting, the Working Group adopted the text of article 5 as follows:

Article 5

For the purposes of this Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in paragraph (a).

73. The delegation of Yugoslavia placed on record his reservation as regards the adoption of the article with the deletion of the expression "for reasons beyond their control" and stated that the phrase was important to his delegation. He also stated that his acceptance of article 5 as adopted was merely an effort not to block the consensus emerging in the Working Group and expressed his expectation that that problem would be solved during the consideration of article 50 and other corresponding articles.

Article 6

74. The Working Group considered a text for article 6 at its 3rd and 4th meetings on 25 September on the basis of article 6, contained in document A/C.3/WG.1/WP.1. The text of article 6 read as follows:

"Article 6. Definition of the terms 'State of origin', 'State of employment', 'State of return' and 'State of transit'

"For the purpose of this Convention:

"(a) The term 'State of origin' means the State of which [the migrant worker or the members of his family, as the case may be] [any persons to which this Convention is applicable] are nationals;

"(b) The term 'State of employment' means the State where the migrant worker is for the purpose of [employment] [or work] [and where members of his family have accompanied or joined him];

"(c) The term 'State of return' means the State to which the migrant worker [or members of his family] decides to return, whether it be his State of origin or the State in which he is normally resident;

"(d) The term 'State of transit' means any State through which the migrant worker [or members of his family] pass on their departure or return."

75. Upon the suggestion of the Chairman, the Working Group also agreed to delete the title of the article.

76. During the consideration of subparagraph (2), the representative of Italy, supported by other delegations, while referring to article 8 of the draft Convention, pointed out that the paragraph could be reworded in a more concise way, as throughout the Convention it was understood that the concept of State of origin means the State of which the person concerned was a national. Consequently, he proposed to reword it to read:

"(a) The term 'State of origin' means the State of which the person concerned is a national."

77. The Working Group agreed to that proposal.

78. Regarding subparagraph (b), the representative of Yugoslavia suggested a new wording as follows:

"(b) The term 'State of employment' means the State in which the migrant worker is engaged in a remunerated activity."

79. The representative of the Federal Republic of Germany expressed his support for including the words "of which he is not a national" and for using the expression "remunerated activity" as it was used in article 2 which the Group had already adopted.

80. The representative of the United States expressed his preference for the expression "is to be engaged or has been engaged" and for "a State of employment" rather than "the State of employment".

81. In support of that idea, the representative of Morocco, supported by India and various delegations, suggested that, in drafting the paragraph, the Working Group should take into account the provisions of adopted article 2 in which the definition of the term "migrant worker" referred to a person "who is to be engaged, is engaged or has been engaged in a remunerated activity". She further suggested the words "the migrant worker alone or accompanied by members of his family".

82. The representative of the USSR suggested that a uniform terminology should be agreed upon so that if the term "State of employment" was accepted, it should appear throughout the draft Convention instead of "receiving State" which still appeared in a few of the provisions.

83. While supporting the inclusion of a reference to the "members of his family", because in the context it better reflected the links between migrant workers and the State where they normally resided, the representative of Portugal stated that she would have preferred a broader term such as "receiving State" instead of "State of employment".

84. The representatives of the Federal Republic of Germany and Italy stated that there was no need to mention the members of the family in that context. The representative of Italy suggested adding the phrase "as the case may be' after the words "engaged in a remunerated activity".

85. After some discussion, the representative of Morocco stated that she would not insist on maintaining the reference to the members of the family as it was understood that the entire draft Convention was applicable to migrant workers and members of their families.

86. The representative of Finland warned that his delegation could see a risk in broadening that concept if the present tense was not used exclusively in that context.

87. The Working Group adopted subparagraph (b) as follows:

> (b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

88. During the consideration of subparagraph (c), the representative of Spain drew the attention of the Group to the translation of the term "State of return". He stated that in the Spanish version the term "estado de retorno" should be used, instead of "estado de regreso".

89. In the course of the discussion of this paragraph it was suggested that the words "decides to return" should be replaced by the words "decides to settle after departure". The representatives of Morocco, Algeria and Tunisia said that the idea of the personal choice of the migrant worker to return should be reflected in the provision.

90. The representative of the Federal Republic of Germany felt that the word "return" in that specific concept would be restrictive, as there were cases where the migrant workers had not decided themselves to return to their country of origin.

91. The representative of France raised the question as to whether there was a need to define the concept of the "State of residence" since the draft Convention also addressed frontier workers.

92. The Chairman explained that the concept of the "State of residence" was implicitly taken care of in the definition of the term "State of return".

93. After some discussion, the representative of Sweden pointed out that a definition of the term "State of return" might not be necessary in the draft Convention as references to the "State of return" were made only in articles 66 and 68 of the Convention.

94. As various delegations had also proposed the deletion of that paragraph, the Working Group agreed to leave out a definition of the "State of return".

95. The representatives of India and Yugoslavia placed on record their reservation with respect to the decision to leave out the definition of the term "State of return". The representative of India stated that in that context, the concept of the State of normal residence was very important and should find its place in all relevant articles.

96. The representative of Morocco stated that her delegation accepted the deletion of the paragraph on the definition of the "State of origin" rather than having a text where the migrant workers' choice of return could be questioned.

97. The Chairman stated that the Working Group at that stage had decided not to include a definition of the "State of return" in that part of the draft Convention. However, when considering articles 66 and 68, if the Working Group felt that there was a need to define the "State of return", the Group would then revert to the definition of that term.

98. The Working Group then took up subparagraph (d) relating to the "State of transit" which would then become subparagraph (c) of the article.

99. After a brief discussion, the Working Group agreed to reword subparagraph (c) as follows:

> "(c) The term 'State of transit' means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of normal residence."

100. The Working Group thus adopted article 6 as follows:

Article 6

For the purposes of this Convention:

(a) The term "State of origin" means the State of which the person concerned is a national;

(b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term "State of transit" means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of normal residence.

PART II

Non-discrimination with respect to rights

Article 7

101. The Working Group began consideration of part II of the draft Convention at its 6th and 7th meetings, from 26 to 29 September.

102. The Working Group proceeded with a general exchange of views on the provisions of that part of the draft Convention during which most delegations reiterated the purpose of the mandate of the Working Group and those general comments on part II.

103. The Working Group then considered a text for article 7 on the basis of article 7 contained in document A/C.3/39/WG.1/WP.1. The text of article 7 read as follows:

> "Article 7
>
> "Each State Party to this Convention undertakes to respect and to ensure to all migrant workers and members of their families within its territory and subject to its jurisdiction the rights recognized in this part of the Convention without distinction of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national [ethnic] or social origin, nationality, age, property, birth [marital] or other status."

104. In view of the various comments and suggestions made, the Chairman suggested that interested delegations should hold informal consultations and with a view to formulating the title of part II and a text for article 7.

105. At the beginning of the 7th meeting, on 29 September, the Chairman announced that as a result of informal consultations, the following formulation had been reached:

> "Each State Party to this Convention undertakes, in accordance with the Universal Declaration of Human Rights, to respect and to ensure to all migrant workers and members of their families, within its territory or subject to its jurisdiction, the rights provided for in this Convention without distinction of any kind, on the basis of 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."

106. The Chairman pointed out that the essence of the provision was the obligation of every State to apply every article of the Convention, without distinction of any sort. Paragraph 1 of article 1 contained the principle of non-discrimination in a general sense. Accordingly, it had been agreed during the informal consultations, that part II of the draft Convention would comprise article 7 only and would be entitled: "Non-discrimination with respect to rights".

107. The representative of the USSR stated that the Universal Declaration of Human Rights had been expanded by the International Covenant on Economic, Social and Cultural Rights and that on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and other conventions on human rights. Such exclusive reference to the Universal Declaration of Human Rights was perfunctory and would thus seem discriminatory with regard to the other conventions. His delegation therefore was not in favour of including a reference to the Universal Declaration in article 7. He also said that since paragraph 1 of article 1 and article 7 were related, he could agree with the proposal which had been made to merge that provision in a single article. He also expressed doubts about the use of the word "or", instead of "and" in the expression "within its territory and subject to its jurisdiction".

108. In connection with the latter point, the Chairman pointed out that the use of the word "and" would imply that both requisites, i.e., both the territorial and the jurisdictional, would have to be met; the word "or", on the other hand, meant that either the one or the other requisite would have to be met. On another point, the Chairman said that it was useful to repeat the non-discriminatory clause in both article 1 and article 7. Article 7 referred to the obligation of States to apply the Convention without discrimination, while article 1 could also refer to companies and other private employers.

109. After a brief discussion, the Chairman suggested that the following expression be used instead of a reference to the Universal Declaration of Human Rights: "in accordance with the international instruments concerning human rights".

110. The representative of Morocco placed on record her reservation in regard to the translation of the word "property", by the word "fortune" in the French version of the International Covenants. She reiterated the position of her delegation that only the Spanish version, in which the word "property" was translated as "posicion económica" corresponded to the interpretation which her delegation attributed to the word "property".

111. At the 7th meeting, on 29 September, article 7 was adopted as follows:

Article 7

Each State Party to this Convention undertakes, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within its territory or subject to its jurisdiction the rights provided for in this Convention without distinction of any kind on the basis of 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.

112. At the 8th meeting, on 29 September, the representative of the USSR said that in the Russian text of article 7 both words "and/or" should appear between the words "its territory" and the words: "subject to its jurisdiction".

PART III

Human rights of all migrant workers and members of their families

Article 8

113. At the 7th meeting, on 29 September, the Chairman said that, as a result of informal consultations, part III of the draft Convention would start with article 8, and would be entitled "Human rights of all migrant workers and members of their families". This text was agreed upon by the Working Group.

114. The text of article 8, as adopted at the first reading (A/C.3/39/WG.1/WP.1), was formulated as follows:

"Article 8

"(1) Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with other rights recognized in this part of the Convention.

"(2) Migrant workers and members of their families shall have the right at any time to re-enter their State of origin."

115. At the 7th meeting, on 29 September, the Chairman announced that, as a result of informal consultations, the following text had been arrived at, including some modifications in paragraph (2):

Article 8

(1) Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with other rights recognized in this part of the Convention.

(2) Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

116. Article 8 was adopted as read out by the Chairman.

Article 9

117. The text of article 9, as adopted at first reading (A/C.3/39/WG.1/WP.1), was formulated as follows:

"The right to life of migrant workers and members of their families shall be protected by law [under the same conditions as for citizens of the State concerned]."

118. At the 7th meeting, on 29 September, the Chairman announced that, as a result of informal consultations, it had been agreed to delete the phrase in brackets. The Working Group then adopted article 9 as follows:

Article 9

The right to life of migrant workers and members of their families shall be protected by law.

Article 10

119. At its 7th meeting, on 29 September, the Working Group adopted article 10 on second reading without any changes in the text adopted at the first reading, as follows:

Article 10

Migrant workers and members of their families shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11

120. At the 7th meeting, on 29 September, the Chairman announced that, as a result of informal consultations, it had been agreed to delete the phrase "in cases provided for by law" which appeared in brackets at the end of subparagraph (b) of paragraph (4) of article 11, as it had emerged at the first reading (A/C.3/39/WG.1/WP.1). The Working Group thus adopted article 11 as follows:

Article 11

(1) Migrant workers and members of their families shall not be held in slavery or servitude.

(2) Migrant workers and members of their families shall not be required to perform forced or compulsory labour.

(3) Paragraph (2) shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(4) For the purpose of this article the term "forced or compulsory labour" shall not include:

(a) Any work or service, not referred to in paragraph (3), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service which forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

121. At the 15th meeting of the Working Group, the representative of India stated that his delegation would have preferred the deletion of subparagraph (4) (b) of article 11 or at least the deletion of the word "emergency" from that subparagraph.

Article 12

122. The text of article 12 as it emerged from the first reading (A/C.3/39/WG.1/WP.1) was formulated as follows:

"Article 12

"(1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. [This right shall include freedom to have [or not to have] or to adopt [or not to adopt] a religion or belief of their choice and freedom whether individually or in community with others and in public or private, to manifest their religion or beliefs in worship, observance, practice and teaching.]

"[(2) Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have [or not to have] or to adopt [or not to adopt] a religion or beliefs of their choice.]

"(3) Freedom to manifest one's religion or [beliefs] [convictions] may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

"(4) The States Parties to this Convention undertake to have respect for the liberty of migrant workers [to practice their religion and] to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions."

123. At the 7th meeting, on 29 September, the Chairman said that, as a result of informal consultations, it had been suggested that all brackets in paragraph (1) of article 12 should be deleted.

124. The representative of Morocco stated that it was difficult for her delegation to accept the deletion of the brackets. Morocco was an Islamic country and, according to Islam, a Muslim could not change his religion to adopt another religion. She added that Islam did not recognize the fact of not having a religion. After a brief discussion, the Working Group decided to postpone consideration of article 12.

125. At its 9th meeting, on 30 September, the Working Group continued its consideration of article 12.

126. The representative of Morocco expressed her preference for using the wording of the Declaration on the ELimination of All forms of Intolerance and of Discrimination based on Religion or Belief.

127. The representative of the USSR suggested that, in the present context, the wording of the International Covenant on Civil and Political Rights, and in particular article 18 of the Covenant, would be more relevant in the drafting of article 12 of the draft Convention.

128. After some discussion, the Working Group agreed to delete the words "[or not to have]" and "[or not to adopt]" in paragraphs (1) and (2) and to delete the brackets around the second sentence of paragraph (1). The Working Group also agreed to eliminate the brackets around paragraph (2). In paragraph (3), the Working Group agreed to delete the brackets around the words "[beliefs]" and to delete the word "[convictions]".

129. The representatives of Finland, the Federal Republic of Germany, India and Sweden also expressed their preference for the wording of the Covenant.

130. The Chairman asked the representative of Morocco whether she would insist on keeping her proposal. The representative of Morocco stated that, to avoid hindering the consensus, she would place on record that during the drafting she had wished to retain the wording of article 1 of the Declaration on religious intolerance.

131. Upon the suggestion of the representative of Italy, the Working Group also agreed to replace the word "whether" by the word "either" in paragraph (1) and to change the word "beliefs" to the singular in paragraphs (1) and (2), in order to keep the text of article 12 in harmony with the formulation of article 18 of the International Covenant on Civil and Political Rights.

132. After some discussion, the Working Group adopted paragraphs (1), (2) and (3) of article 12, as revised, reading as follows:

> (1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching.
>
> (2) Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice.
>
> (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

133. The representative of the United Arab Emirates cautioned that in the Arabic version of the article the word "private" should not be translated by the word "secretly".

134. During the discussion of paragraph (4) of article 12, the representative of Morocco proposed that the words "States Parties" should be replaced by the words "States of employment".

135. The representative of India suggested replacing the words "to ensure the religious and moral education" by the words "to provide for religious and moral education".

136. The representative of Yugoslavia placed on record that, in the view of his delegation, the expression "to ensure the religious and moral education of their children" was inconsistent with the provision of the Yugoslav Constitution and therefore could not be interpreted as an obligation.

137. With reference to the concern raised by the representative of Yugoslavia, the representative of the USSR stated that the wording of the provisions of paragraph (4) should be understood as meaning that the States concerned did not bear the responsibility for ensuring the religious and moral education of the children of migrant workers, but rather undertook to respect the liberty of migrant workers to ensure the religious and moral education of their children.

138. The Chairman explained that the only obligation involved in the paragraph was to respect the liberty to ensure the religious and moral education of the children of migrant workers, but that it was not an obligation of States.

139. The representative of Italy, supported by the representative of Sweden, expressed preference for paragraph 4 of article 18 of the International Covenant on Civil and Political Rights.

140. While supporting the wording of article 18 of the Covenant, the representative of the Federal Republic of Germany remarked that at the time the Covenants were being drafted certain rights that were specifically incumbent upon States of employment might not have been taken into account. Consequently, he felt that it may be necessary to specify that by referring to States of employment rather than to States Parties, or to reword the phrase to say that "States Parties to this Convention shall undertake to respect the liberty of migrant workers to ensure the religious and moral education of their children in the same manner as their nationals".

141. The representatives of Kenya, Senegal and Tunisia emphasized the necessity of specifying that the responsibility to respect the liberty of migrant workers to ensure the religious and moral education of their children should be incumbent upon the States of employment. In their view, the use of the term "States Parties" in the present context did not sufficiently or clearly stress such responsibility. They argued that although the draft Convention was applicable during the entire process of migration, the application of the provisions of the different rights might vary in accordance with the stages of the process of migration.

142. The representative of the United States warned that the obligation imposed by the proposed article was only that of non-interference.

143. The representatives of the Netherlands and Finland suggested that the States in paragraph (4) should not be refer to the States of origin. Like the representatives of the United States and Sweden they felt that a mere reference to the State of employment would suffice, stating for the record that the process of education took place in the State of employment.

144. After a lengthy discussion and in an effort to accommodate the views of delegations, the Chairman suggested rewording paragraph (4) as follows:

> "(4) No restrictions shall be imposed on the liberty of migrant workers to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions."

145. While supporting the Chairman's proposal for a compromise, the representative of the United States suggested a slight revision in order to harmonize the text with paragraph 4 of article 18 of the International Covenant on Civil and Political Rights, as follows:

> "The liberty of migrant workers to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions shall be respected."

146. During the debate, the representative of Portugal proposed to replace the words "migrant workers" by the words "parents to whom this Convention applies". In introducing her proposal, she stated that the provisions of paragraph (4) of article 12 addressed only parents who were migrant workers. Taking into account the possibility that one of those parents might not necessarily be a migrant worker, as defined in the present draft Convention, and might thus be deprived of that right, she felt that it would be important to her delegation to substitute the word "parents" for "migrant workers", in line with paragraph 4 of article 18 of the International Covenant on Civil and Political Rights.

147. With reference to the above proposal, the representative of the Federal Republic of Germany stressed that the concern raised by the delegation of Portugal should be taken into account in paragraph (4). The representative of France, while noting the joint responsibility of parents involved in such a context expressed his support for the wording of the Covenant. The representative of Haiti expressed his preference for a more general formulation.

148. After a lengthy discussion, the Chairman suggested postponement of the discussion on paragraph (4) of article 12 and recommended that interested delegations should meet with a view to providing the Working Group with a text acceptable by consensus.

149. At the 10th meeting, on 30 September, the Working Group resumed consideration of paragraph (4) of article 12.

150. The representative of Italy suggested a new wording for paragraph (4) as follows:

"(4) The liberty of parents to whom this Convention applies to ensure the religious and moral education of their children, ... shall be fully respected."

151. The representative of Portugal supported that proposal.

152. The representative of Finland stated that he could go along with that proposal rather than using the words "migrant workers to whom this Convention applies".

153. The representative of the USSR stated that he would not have any difficulty with the proposals by Italy and Finland as long as the language retained remained closer to the provisions of the Covenant.

154. After some discussion, the Working Group adopted paragraph (4) as amended by Finland and adopted article 12 as a whole as follows:

Article 12

(1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching.

(2) Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice.

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

(4) The liberty of parents to whom this Convention applies to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions, shall be fully respected.

155. The delegation of France stated that in the French version of the text, the words "la liberté de faire assurer" should be replaced by the words "la liberté d'assurer".

156. As regards the interpretation of paragraph (4) of article 12, the Working Group placed on record that, while considering article 12, paragraph (4), which referred to the liberty of migrants to ensure the religious and moral education of their children, a proposal had been made by the representative of Morocco expressing the wish of several delegations to replace the words "States Parties to

this Convention" by "States of employment". That proposal was meant to reflect the fact that in the process of migration it was generally in the State of employment that the migrant worker most often raised his children and it was there that the protection given by paragraph (4) was most often needed. During the discussions on paragraph (4) the Working Group expressed its awareness of the responsibilities placed on the States of employment to guarantee migrants liberty to ensure the religious and moral education of their children. Nevertheless, in order to conform the text of paragraph (4) with the other paragraphs of article 12, and in view of the fact that the Group feared that an unintended exclusive character could be read into the words "State of employment", the Group accepted a compromise formula presented by its Chairman and deleted that reference.

157. The representative of Algeria placed on record that, as regards paragraph (4) of article 12, her delegation had stated that, in case of divorce, the religious and moral education of the children should be in conformity with the religion of the father, in accordance with the law in force in Algeria.

Article 13

158. The text of article 13, as it emerged from first reading (A/C.3/39/WG.1/WP.1), read as follows:

"Article 13

"(1) Migrant workers and members of their families shall have the right to hold opinions without interference.

"(2) Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas [of all kinds], regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.

"(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

"(a) For respect of the rights or reputations of others;

"(b) For the protection of national security or of public order (ordre public) or of public health or morals."

159. At the 7th meeting, on 29 September, the Chairman said that as a result of informal consultations it had been suggested that the brackets be deleted from around the expression "of all kinds" in paragraph (2).

160. The representative of the USSR stated that his delegation would have difficulties with the retention of the expression "of all kinds". He referred to article 20 of the International Covenant on Civil and Political Rights, according

to which propaganda for war and any advocacy of national, racial or religious hatred inciting discrimination, hostility or violence was prohibited by law.

161. The representative of the Federal Republic of Germany, referring to the reservations of his country with regard to article 19 of the International Covenant on Civil and Political Rights, stated that article 13 of the draft Convention could not be applicable to migrant workers and their families in an irregular situation.

162. The representative of the United States expressed his preference for the retention of the expression "of all kinds" in paragraph (2). In his view, paragraph (3) of article 13 balanced the text of paragraph (2). He also pointed out that restrictions similar to those of article 20 of the International Covenant on Civil and Political Rights would be unconstitutional in his country.

163. The representative of France expressed his support for the retention of the expression "of all kinds" in paragraph (2).

164. The representative of Sweden suggested that a subparagraph (c) could be added to paragraph (3) stating the following: "(c) For the fulfilment of obligations undertaken in international agreements in force for the State Party concerned". The representative of Italy said that such a text could imply that the rights mentioned in paragraph (2) could be denied through bilateral agreements. He therefore suggested the possibility of including an article identical to article 20 of the International Covenant on Civil and Political Rights, although, in his view, such an inclusion was not necessary.

165. The representative of Nigeria, supported by the representatives of Algeria and Kenya, favoured the deletion of the expression "of all kinds" in paragraph (2). The representative of Nigeria said that since paragraph (3) contained limitations to the rights mentioned in paragraph (2), it would be illogical to retain the expression "of all kinds" in the latter paragraph.

166. Referring to paragraph (3), the representative of Cape Verde underlined the significance of the expression "as are provided by law" and suggested that subparagraphs (c) and (d) could be added along the lines of article 20 of the International Covenant on Civil and Political Rights. In that case, the expression "of all kinds" in paragraph (2) could be mentioned.

167. At the 8th meeting, on 29 September, the Working Group continued consideration of article 13. The Chairman announced that, as a result of informal consultations, the following suggestions were before the Working Group: paragraph (1) would remain unaltered; in paragraph (2) the brackets would be deleted from around the words "of all kinds"; and in paragraph (3), a subparagraph (c) would be added reading as follows: "(c) for the purpose of preventing war propaganda or advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence."

168. The representative of the United States suggested the use of the word "or" between the words "racial" and "religious hatred" in subparagraph (c) of paragraph (3).

169. Some delegations repeated their scepticism as to the retention of the expression "of all kinds". The representative of Nigeria stated that her delegation, in a spirit of co-operation, could go along with the text as it had been read out by the Chairman if that text gained the consensus of the whole Working Group.

170. The representative of Italy said that, even if the expression "of all kinds" were deleted, the sense of the paragraph would remain the same. However, two subparagraphs (c) and (d) could be added to paragraph (3) following the text of article 20 of the International Covenant on Civil and Political Rights. The representative of Cape Verde stated that that expression should be retained, since it was used in article 19 of the Covenant and it did not seem to be the intention of the Working Group to change the basic philosophy of that article.

171. At its 10th meeting, on 30 September, the Chairman read to the Working Group all the accepted amendments to the text of article 13 following informal consultations. Those amendments consisted in deleting the brackets around the words "[of all kinds]", and in adding the words "of the States concerned" after the words "national security" in subparagraph (b) and in adding new subparagraphs (c) and (d) based on article 20 of the International Covenant on Civil and Political Rights as follows:

"(b) For the protection of national security of the States concerned or of public order (ordre public) or of public health or morals;

"(c) For the purpose of preventing any propaganda for war;

"(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."

172. The Working Group thus adopted article 13 as follows:

Article 13

(1) Migrant workers and members of their families shall have the right to hold opinions without interference.

(2) Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security of the States concerned or of public order (ordre public) or of public health or morals;

(c) For the purpose of preventing any propaganda for war;

(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

173. The representative of Yugoslavia placed on record that subparagraphs 3 (a), (b), (c) and (d) of article 13 did not cover all the concerns of his delegation because the words "all kinds" were included in paragraph 2. His delegation felt that activities and ideas which led to terrorism, as well as subversive activities against any country or any advocacy aimed at overthrowing a constitutional system or a legal Government, related to the question of national security and should be included in restrictions. He stated that, although his delegation was not completely satisfied with the wording of the article, he accepted the present wording to avoid hindering the consensus.

174. The representative of Algeria stated that in a spirit of compromise her delegation did not object to maintaining the phrase "of all kinds" in brackets as the interpretation given to that phrase by her delegation did not purport any risk which would affect national security or of public order (ordre public).

175. The representative of India stated that he would have preferred an explicit reference to "prevention of any acts which might constitute incitement to discrimination, hostility or violence". However, as that was implicitly included in subparagraphs (b) and (d) of paragraph (3), according to the understanding of the Working Group, he would go along with the consensus.

Article 14

176. At the 8th meeting, on 29 September, the Working Group adopted article 14, on second reading, without any changes from the text which had emerged at the first reading (A/C.3/39/WG.1/WP.1), as follows:

Article 14

Migrant workers and members of their families shall not be subjected to arbitrary or unlawful interference with their privacy, family, home, correspondence or other communications nor to unlawful attacks on their honour and reputation. They shall have the right to the protection of the law against such interference or attacks.

Article 15

177. At the 8th meeting, on 29 September, the Working Group considered article 15 on the basis of the following text which had emerged at the first reading (A/C.3/39/WG.1/WP.1):

"Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment (receiving country), their assets are expropriated in whole or in part, they shall have the right to just compensation."

178. The Chairman said that the words "[receiving country]" could now be deleted since the Working Group had already adopted the definitions. The representative of India suggested the inclusion of the words "and adequate" before "compensation".

179. A discussion took place on the clarification of the word "arbitrarily" in the first sentence of article 15. The representative of the United States pointed out that, in article 14, the words "arbitrary or unlawful" had been used and that the same words could also be used in article 15. Some delegations agreed with the Chairman's view that the term "arbitrarily" referred in that context to acts not performed in accordance with law.

180. The representative of Italy said that, in his view, the word "just" before "compensation" was not precise. He suggested instead the replacement of the word "just" by the words "adequate and effective".

181. After a brief debate the Working Group adopted article 15 at the same meeting as follows:

Article 15

Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, their assets are expropriated in whole or in part, they shall have the right to fair and adequate compensation.

Article 16

182. The Working Group considered the text for article 16 at its 8th to 13th meetings from 29 September to 1 October, on the basis of the following text which had emerged at the first reading (A/C.3/39/WG.1/WP.1):

"Article 16

"(1) Migrant workers and members of their families shall have the right to liberty and security of person.

"(2) Migrant workers and members of their families shall be entitled to [normal police] protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

"(3) Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

"(4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention, nor be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

"(5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest and, so far as possible in a language which they understand, of the reasons for their arrest and shall be promptly informed in a language which they understand of any charges against them.

"(6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release [in accordance with the penal procedure of the receiving State]. [It shall not be the general rule that while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.]

"(7) (a) In the case of arrest or detention of a migrant worker or a member of his family [on a criminal charge], if he so requests, the diplomatic or consular authorities of his State of origin, or representing the interests of that State, shall be informed without delay of the arrest or detention and of the reasons therefor. Any communication addressed to the said authorities by the person concerned shall also be forwarded to them without delay;

"(b) The person concerned shall be informed without delay of the above-mentioned rights;

"(c) The said diplomatic or consular authorities shall have the right to visit the person concerned during any period of detention [on a criminal charge] or imprisonment, to converse and correspond with him and to arrange for his legal representation [in accordance with the terms of the Vienna Convention relating to consular relations].

"(8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. [In taking such proceedings, they shall have the free assistance of an interpreter if they cannot understand or speak the language used.]

"(9) Migrant workers and members of their families who have been victims of unlawful arrest or detention [shall have an enforceable right to compensation] [shall have the right to bring an action for compensation] [for damages caused] [subject to domestic legislation]."

183. A discussion was held at the outset concerning the position of certain provisions of article 16 in relation to article 18 of the draft Convention. Some representatives suggested possible ways of reorganizing article 16. After the

discussion, the Working Group decided to proceed by discussing the substance of each paragraph of article 16.

184. At the 8th meeting, on 29 September, the Working Group agreed on the text of paragraph (1) as it had emerged from the first reading.

185. Turning to paragraph (2) of article 16, the Working Group discussed the meaning of the words "[normal police]". The representative of Morocco suggested deleting the word "normal". The representative of the Federal Republic of Germany suggested the deletion of both words. The representative of the Niger suggested replacing the word "normal" by the word "effective". The representative of Italy suggested deleting the words "[normal police]" and replacing them by the word "effective".

186. At the 8th meeting, on 29 September, the Working Group adopted the following text for paragraph (2):

> Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

187. At the same meeting the Working Group adopted paragraph (3) as it had emerged at the first reading.

188. In connection with paragraph (4), the representative of France pointed out that the French version of the text should read "prévus par la loi" instead of "prévue par la loi".

189. The representative of the USSR pointed out a discrepancy between the English and Russian versions of paragraph (4) and said that the Russian version should be aligned with the English. He drew the attention of the Working Group to the fact that the use of the word "arbitrary" might appear to have a contradictory meaning as it was followed by the reference to the procedure established by law.

190. The Chairman called on the Working Group to pay attention to all the language versions of the paragraph and to ensure that all texts corresponded.

191. The Working Group agreed that the text of paragraph (4) should be aligned with the text of article 9 of the International Covenant on Civil and Political Rights.

192. At the 8th meeting, on 29 September, the Working Group adopted paragraph (4) with the understanding contained in paragraph 191 above.

193. At its 10th meeting, on 30 September, the Chairman read paragraph (5) of article 16 as amended as follows:

> "(5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and shall be promptly informed in a language they understand of any charges against them."

194. The representative of the United States expressed his support for the new changes brought to the paragraph. He also stated that the term "arrest", as used in the Convention, referred in his view to a situation in which a migrant worker or a member of his family had been taken into custody either pursuant to a warrant or following production of evidence indicating a violation of law or regulations.

195. After a brief discussion the Working Group adopted paragraph (5) as amended.

196. The Working Group also adopted paragraph (6) as follows:

> (6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

197. After lengthy discussions on paragraph 7 and in view of its complexity, the Chairman suggested that interested delegations should meet in informal consultations with a view to drafting a new text for paragraph (7).

198. During the discussion on paragraph (8) the representative of the Federal Republic of Germany reiterated the reservation he had expressed at the previous meeting.

199. The representative of the United States said that his suggestion was to start the second sentence of paragraph (8) with the words "when they attend" and delete the words "[in taking]". Turning to the issue of the free assistance of an interpreter, he stated that free interpretation should be provided only for the indigent and not for persons who could themselves pay for an interpreter.

200. The representative of Ghana stated that, in the African context, the migrant worker and the members of his family under detention were often brought before a court to participate in the proceedings and that, given their educational background the need for the assistance of an interpreter could not be overruled. She added that, to avoid discrimination, the interpreter's assistance should be free.

201. The representative of Portugal suggested the addition at the end of paragraph (8) of a phrase along the following lines:

> "if they are entitled to benefit from legal assistance in the receiving State".

She said that such a provision would guarantee free interpretation even in cases where such interpretation was not foreseen by internal law within the framework of legal assistance.

202. The representative of Finland favoured the retention of the word "free" before "interpretation" and said that no distinction should be made for human rights on the basis of wealth. He requested the inclusion in the report of a statement that, if the word "free" were deleted, his delegation's understanding would be that interpretation had to be provided without cost to the individual.

203. The representative of India suggested that the idea of legal assistance, if so required under national law, should also be included in paragraph (8). That suggestion was supported by the representative of Italy. The representative of the USSR pointed out the need to stipulate that legal assistance should be provided to migrant workers on an equal footing with nationals. The representative of France cautioned about the inclusion of legal assistance or legal aid in the draft Convention, as those practices did not exist in all countries. Some representatives said that the issue of equality could be dealt with later in paragraph (1) of article 18. It was also suggested that the idea of interpretation without cost could be dealt with also in paragraph (1) of article 18, while the word "free" could be deleted in paragraph (8) of article 16.

204. In view of the debate, the representative of Morocco suggested that the second sentence of paragraph (8) be reformulated as follows:

> "When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used."

205. The representative of Italy favoured the adoption of the above-mentioned formulation with the understanding that the issue of legal aid would be raised again under article 18.

206. At the 11th meeting, on 1 October, the Working Group adopted paragraph (8), with the understanding mentioned by the representative of Italy, as follows:

> (8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter if they cannot understand or speak the language used.

207. At the same meeting, the Working Group began discussion of paragraph (9) of article 16. Several representatives expressed their clear preference for using in that paragraph the language of the International Covenant on Civil and Political Rights and in particular article 9, paragraph 5. The representative of the Federal Republic of Germany stated that his delegation had firm instructions to accept the text of paragraph (9) of article 16 ending with the words "enforceable right to compensation".

208. The representative of Nigeria said that she preferred the deletion of the word "enforceable" and the retention of the words "subject to domestic legislation".

209. The representative of the United States suggested the following formulation:

> "Migrant workers and members of their families who have been victims of unlawful arrests or detention shall have a right to ompensation enforceable according to domestic legislation."

210. The representative of Italy, explaining his support for the latter suggestion, said that rights should be enforceable and that they could be enforceable only according to domestic law. The representative of Senegal pointed out that the expression "according to domestic legislation" could refer only to the procedures to be followed without putting into question the right to compensation itself. He thus suggested that the expression "granted in accordance with domestic legislation" would be more precise.

211. The representative of the USSR supported the view of the representative of Senegal. He pointed out that the use of the proposed formulation would have meaning only if the right to compensation existed in the national legislation. However, the proposed text did not make it obvious, while when the Covenant on Civil and Political Rights was adopted, there was an intent to affirm that right rather than presuming that it already existed.

212. Some delegations pointed out that the French version of article 9, paragraph 5 of the International Covenant on Civil and Political Rights, unlike the other language versions, did not contain a word equivalent to the term "enforceable" in the English version. The representatives of France, Italy and Senegal pointed out that in French the term "droit" implied that a right was enforceable through the tribunals.

213. The Chairman said that the Working Group had agreed on the absolute right to compensation. Thus a sentence could perhaps be added along the lines of the following:

> "The procedures securing such compensation should be those established by domestic law".

214. The representative of Italy suggested that the language of article 9, paragraph 5, of the International Covenant on Civil and Political Rights should be followed, along with an understanding to be reflected in the report to the effect that States had the obligation to provide for procedures for the seeking of compensation.

215. At its 12th meeting, on 1 October, the Working Group adopted paragraph (9) of article 16 as follows:

> (9) Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

216. Regarding paragraph (7) of article 16, the Working Group had before it at its 11th meeting a text based on informal consultations as follows:

"(7) When a migrant worker or a member of his family is arrested or committed to prison or custody pending trial or is detained in any other manner,

"(a) He shall be informed without delay of his right to communicate with the consular or diplomatic authorities of his State of origin, or representing the interests of that State;

"(b) Subject to the provisions of relevant treaties applicable between concerned States Parties to this Convention, the said consular or diplomatic authorities shall have the right to visit the person concerned during the period of detention, custody or imprisonment, to converse and correspond with him and to arrange for his legal representation. Any communication addressed to the said authorities by the person concerned shall also be forwarded to them without delay;

"(c) Consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action."

217. The Working Group also had before it a proposal for article 7 received from the Byelorussian Soviet Socialist Republic reading as follows:

"(7) ...

"(a) His (their) right to be informed and to communicate with the consular or diplomatic authorities of his State of origin, or representing the interests of that State, should be recognized, as well as the right of the said consular or diplomatic authorities to be informed of the reasons for the arrest or detention and to visit the person concerned during the period of detention, custody or imprisonment, to converse and correspond with him and to arrange for his legal representation;

"(b) Any communications addressed to the said authorities by the person concerned or the reverse shall be forwarded without delay."

218. A proposal prepared by Sweden was also before the Working Group, reading as follows:

"When a migrant worker or a member of his family is arrested or committed to prison or custody pending trial or is detained in any other manner:

"(a) He shall have the right to receive visits, converse and correspond with the consular or diplomatic authorities of the State of origin or of the country representing the interests of that State, or with its representatives, and to make arrangements with them for his legal representation. Any communication addressed to the said authorities by the person concerned shall also be forwarded to them without delay;

"(b) He shall be informed without delay of this right;

"(c) The said consular or diplomatic authorities shall, if he so requests, be informed without delay of the arrest or detention and of the reasons therefor;".

219. After further consultations at the 13th meeting, the Working Group adopted a text for paragraph (7) and adopted article 16 as a whole as follows:

Article 16

(1) Migrant workers and members of their families shall have the right to liberty and security of person.

(2) Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

(3) Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

(4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention, they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

(5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

(6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

(7) When a migrant worker or a member of his family is arrested or committed to prison or custody pending trial or is detained in any other manner,

(a) The consular or diplomatic authorities of his State of origin or of a State representing the interests of that State shall, if he so requests, be informed without delay of his arrest or detention and of the reasons thereof;

(b) He shall have the right to communicate with the said authorities. Any communication by the concerned person to the said authorities shall be forwarded without delay, and he shall also have the right to receive communications from the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his legal representation.

(8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter if they cannot understand or speak the language used.

(9) Migrant workers and members of their families who have been victims of unlawful arrests or detention shall have an enforceable right to compensation.

220. The representative of India stated that many parts of article 16 were based on article 9 of the International Covenant on Civil and Political Rights. At the time of its accession to the Covenant, India had clarified its position as to how article 9 of the Covenant would be applied in practice in India. That position would continue to apply to article 16 of the draft Convention also. Further, on article 16, paragraph (7) in regard to intimation of arrests, India would have preferred deletion of the phrase "if he so requests".

221. The Working Group was of the understanding that paragraph 7 of article 16 should not impair the application of any consular treaty between the States Parties concerned. It was also understood that article 77 (1) (b), as contained in document A/C.3/39/WG.1/WP.1, should be drafted in such a way that it also safeguarded the application of said consular treaties.

222. As regards paragraph (9), the representative of the United States noted that the President of the United States, when submitting the International Covenant on Civil and Political Rights to the Senate for its advice and consent to ratification, proposed that the United States enter a reservation with respect to article 9, paragraph 5 of the Covenant. Since paragraph (9) of article 16 of the present Convention being adopted by the Working Group contains substantively identical language, he indicated that a similar reservation might well be proposed if and when the present Convention is submitted to the Senate.

223. The representative of Nigeria, while agreeing with the consensus text arrived at for article 16, paragraph 9, placed on record her delegation's reservations on the retention of the words "enforceable right" in the article. She would have preferred that the right to compensation by the migrant worker would be given "subject to domestic legislation".

224. The representative of the Federal Republic of Germany stated that his delegation interpreted the text of article 16 (7) (c) in a way that it would not affect article 36 (1) (c) of the Vienna Convention on the Law of Treaties as regards States Parties to that Convention.

Article 17

225. The Working Group considered a text for article 17 at its 13th meeting on the basis of article 17 contained in document A/C.3/39/WG.1/WP.1 which read as follows:

"Article 17

"(1) Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

"(2) If they are detained in custody while awaiting trial, they shall, [whenever possible,] [save in exceptional circumstances,] be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

"[(3) Any migrant worker or a member of his/her family who is detained in a State of transit or in a receiving State [pending trial on a charge of] [for] violation of provisions relating to migration, shall be housed, in so far as practicable, separately from persons in detention pending trial for other offences.]

"[(3) Any migrant worker or member of his family who is detained in the State of destination for infraction of the provisions concerning migration shall be housed in suitable accommodation [under judicial control] separate from the prisons or other centres of detention or imprisonment for offenders or criminals.]

"(4) During any period of imprisonment in pursuance of a sentence imposed by a court of law, the treatment of a migrant worker or a member of his family shall be aimed at his reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

"[(5) During detention or imprisonment, migrant workers or members of their families shall enjoy the right to visits by members of their family.]

"[(6) In any case of application of sanctions, including pending proceedings for the expulsion or deportation of migrant workers or their families, the competent authorities of the State of destination shall pay special attention to the problems posed by the families of such workers, with particular reference to the specific needs of women and minor children.]

"[(7) The fundamental human rights and the labour rights of migrant workers or their families shall not, in the event of their being subjected to any form of detention or imprisonment provided for by the laws in force in the State of destination, be limited or impaired merely because such workers or their families lack the required migration documentation. This provision shall apply at all times, including during any expulsion or deportation proceedings.]

"[(8) All costs arising from the detention of migrant workers or their families shall be borne by the competent authorities of the State of destination.]"

226. At the same meeting, the Working Group adopted paragraph (1) of article 17 as it stood.

227. During the consideration of paragraph (2) the representatives of the Federal Republic of Germany and Italy suggested retaining the phrase "save in exceptional circumstances" because it corresponded to the language used in the Covenant.

228. Regarding the separation of juveniles from other persons the representative of Finland, supported by Sweden, Denmark and Norway, stated that such separation should not be an obligation. He therefore proposed to reword the sentence to read "Accused juvenile persons shall, save in exceptional circumstances, be separated from adults".

229. While supporting Finland's statement that such separation should not be an obligation, the representative of Norway referred to the reservations of his country with respect to article 10 of the International Covenant on Civil and Political Rights. He expressed his preference for the qualifying words "whenever possible" instead of "save in exceptional circumstances".

230. The representative of the United States proposed replacing "while awaiting trial" by the words "while awaiting adjudication".

231. The representative of France suggested adding a paragraph between paragraphs (2) and (3) as follows:

"Migrant workers and members of their families temporarily deprived of their liberty while awaiting the application of a decision concerning their departure from the territory of the State of employment shall be separated from sentenced and convicted persons."

232. The representative of Italy proposed amending the proposal as follows:

"Migrant workers and members of their family deprived of their liberty while awaiting a decision concerning their presence, their stay in the territory of the State of employment, or the application of such a decision, shall be separated from sentenced and convicted persons."

233. The representative of Portugal supported that amendment by Italy.

234. The representatives of Morocco and Senegal stated that their delegations could not accept such a proposal as the idea behind it implicitly provided for expulsion or deportation, while a migrant worker or a member of his family might be detained on other grounds that did not necessarily call for expulsion or departure from the territory of the State of employment.

235. The representative of Algeria stated that she could not accept such a proposal which, on the one hand would prejudice the result of the procedure referred to in

the proposal by France and would seem to indicate that expulsion would necessarily follow the result of the proceedings against the migrant worker. On the other hand, the proposal would tend to single out one case among so many. The representative of Algeria added that in her view, proposed paragraph (3) which dealt with violations of provisions relating to migration covered the concern of the representative of France.

236. In view of the lengthy debate, the representative of Morocco drew the attention of the Working Group to the fact that, in the course of the first reading, paragraph (3) should have come before paragraph (2). Consequently she proposed considering the alternative paragraph (3) in the right column as paragraph (2) of the article. The Working Group did not object to that proposal.

237. The Working Group decided to continue the discussion of the remaining parts of the article at its next session.

OTHER MATTERS

238. In the course of the session the representative of the Economic Commission for Africa (ECA) informed the Working Group that pursuant to a resolution adopted in March 1985 by the fourth meeting of the Conference of African Ministers of Social Affairs, three letters were addressed by the Secretary-General of the Organization of African Unity (OAU) and the ECA Executive Secretary, in April and September 1985 and again in April 1986, to all African Governments drawing their attention in particular to the text of the draft Convention as provisionally agreed upon during the first reading and to the issues that required particular attention and consideration by the African representatives on the Working Group. Rwanda and Côte d'Ivoire were the first countries to have responded, and the substance of their comments could be made available to the Working Group by their representatives. He also said that Africa had developed a special interest in all issues pertaining to migratory labour, which could be evidenced, inter alia, by the following:

(a) The Protocol prepared by the Economic Community of West African States on the freedom of movement and establishment, a substantive part of which dealt with the rights of the migrant workers and their families;

(b) The keenness of the Southern African Labour Commission member countries to be briefed yearly on the elaboration of the draft Convention;

(c) The publication by ECA of a document on migratory labour in southern Africa;

(d) The entry into force in October 1986, of the African Charter on Human and Peoples' Rights, adopted by the OAU Assembly of Heads of State and Government in June 1981, the required number of accessions/ratifications having been obtained.

239. The representative of Australia, in his concluding remarks, noted that at the 9th meeting of the eleventh session, Australia had introduced a proposal to include a clause excluding from the coverage of the Convention persons who were admitted to

live permanently in a country and who became eligible for citizenship. Details of the Australian proposal are noted in paragraphs 117 and 118 of document A/C.3/40/6. The representative of Australia wished to have on record that while the twelfth session of the Working Group had not provided a suitable occasion for further discussion of the proposal, it was still his delegation's desire to have it considered at the appropriate time at a subsequent session of the Working Group.

240. The Working Group expressed its regret that its inter-sessional meeting of the spring of 1986 had been deferred at a time most needed, when the Working Group was making substantial progress towards completion of its task. The Working Group was aware, however, that the decision had been taken under exceptional circumstances by the resumed fortieth session of the General Assembly in view of the financial situation facing the organization, and that such a decision would not affect the normal organization of work in 1987 or the following sessions of the Working Group. Thus, the Working Group strongly recommended that the inter-sessional meeting of the Group be held in the spring of 1987, so as to enable it to complete, if possible, the second reading of the remaining texts of the draft Convention in the spring and fall sessions of 1987.

241. The Working Group, while deeply appreciating the efficiency of the Secretariat in supporting the work of the Group, realized that wider secretarial support was necessary in the following stages of the elaboration of the draft Convention. The Working Group stressed that the conclusion of its mandate might be seriously delayed if the Centre for Human Rights did not strengthen the staff assigned to the Working Group.

242. The Working Group agreed that the Chairman would personally convey to the Assistant Secretary-General for Human Rights the contents of the above-mentioned decision so as to stress the importance attached to it by the Group.

243. At its 15th meeting, the Working Group adopted the present report.

II. TEXT OF THE ARTICLES ADOPTED BY THE WORKING GROUP ON SECOND READING DURING THE FORTY-FIRST SESSION OF THE GENERAL ASSEMBLY

PART I

Scope and definitions

Article 1

...

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay, and remunerated activity in the State of employment as well as return to the State of origin or the State of normal residence.

Article 4

For the purposes of this Convention the term "members of the family" refers to persons married to migrant workers or having with them a relationship which, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.

Article 5

For the purposes of this Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a Party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in paragraph (a).

Article 6

For the purposes of this Convention:

(a) The term "State of origin" means the State of which the person concerned is a national;

(b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;

(c) The term "State of transit" means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of normal residence.

PART II

Non-discrimination with respect to rights

Article 7

Each State Party to this Convention undertakes, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within its territory or subject to its jurisdiction the rights provided for in this Convention without distinction of any kind on the basis of 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.

PART III

Human rights of all migrant workers and members of their families

Article 8

(1) Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with other rights recognized in this part of the Convention.

(2) Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

Article 9

The right to life of migrant workers and members of their families shall be protected by law.

Article 10

Migrant workers and members of their families shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11

(1) Migrant workers and members of their families shall not be held in slavery or servitude.

(2) Migrant workers and members of their families shall not be required to perform forced or compulsory labour.

(3) Paragraph (2) shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(4) For the purpose of this article the term "forced or compulsory labour" shall not include:

(a) Any work or service, not referred to in paragraph (3), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service which forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

Article 12

(1) Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private, to manifest their religion or belief in worship, observance, practice and teaching.

(2) Migrant workers and members of their families shall not be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice.

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

(4) The liberty of parents to whom this Convention applies to ensure the religious and moral education of their children, including children over whom they have legal guardianship, in conformity with their own convictions, shall be fully respected.

Article 13

(1) Migrant workers and members of their families shall have the right to hold opinions without interference.

(2) Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security of the States concerned or of public order (ordre public) or of public health or morals;

(c) For the purpose of preventing any propaganda for war;

(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 14

Migrant workers and members of their families shall not be subjected to arbitrary or unlawful interference with their privacy, family, home, correspondence or other communications nor to unlawful attacks on their honour and reputation. They shall have the right to the protection of the law against such interference or attacks.

Article 15

Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, their assets are expropriated in whole or in part, they shall have the right to fair and adequate compensation.

Article 16

(1) Migrant workers and members of their families shall have the right to liberty and security of person.

(2) Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

(3) Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedures established by law.

(4) Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention, they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

(5) Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

(6) Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial, they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

(7) When a migrant worker or a member of his family is arrested or committed to prison or custody pending trial or is detained in any other manner,

(a) The consular or diplomatic authorities of his State of origin or of a State representing the interests of that State shall, if he so requests, be informed without delay of his arrest or detention and of the reasons thereof;

(b) He shall have the right to communicate with the said authorities. Any communication by the concerned person to the said authorities shall be forwarded without delay, and he shall also have the right to receive communications from the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his legal representation.

(8) Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter if they cannot understand or speak the language used.

(9) Migrant workers and members of their families who have been victims of unlawful arrests or detention shall have an enforceable right to compensation.

Article 17

(1) Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.
