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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. The Working Group has since 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; (l) a seventh session, during the forty-first session of the Assembly, from 24 September to 1 October 1986; and (m) a sixth

inter-sessional meeting, from 1 to 12 June 1987; and (n) an eighth session, during the forty-second session of the General Assembly, from 22 September to 2 October 1987.

3. Having examined the progress made by the Working Group during the forty-first session of the General Assembly and concerned at the fact that, owing to the current financial situation, the Working Group could not meet in 1986 between sessions of the Assembly, immediately after the first regular session of the Economic and Social Council, following the practice established for the Group by the Assembly itself, the General Assembly in its resolution 41/151 of 4 December 1986 took note of the recommendations of the Working Group to the effect that its inter-sessional meeting should not be suspended again so as to enable it to complete, as soon as possible, the second reading of the remaining articles of the draft Convention.

4. By the same resolution, the General Assembly, *inter alia*, took note with satisfaction of the report of the Working Group (A/C.3/41/3) and, in particular, of the progress made by the Working Group, 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 1987 of the Economic and Social Council. The Assembly, in paragraph 3 of the resolution, invited the Secretary-General to transmit to Governments the report of the Working Group so as to enable the members of the Group to continue the drafting, in second reading, of the draft Convention during the inter-sessional meeting to be held in the spring of 1987, as well as to transmit the results obtained at that meeting to the Assembly for consideration during its forty-second session. In paragraph 4 of the resolution, the Assembly also invited the Secretary-General to transmit that document to the competent organs of the United Nations and to the international organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group. Further, the Assembly decided that the Working Group should meet during the forty-second session of the Assembly, preferably at the beginning of the session, to continue the second reading of the draft International Convention. The Assembly requested the Secretary-General to do everything possible to ensure adequate secretariat services for the Working Group for the timely performance of its mandate, both at its inter-sessional meeting, after the first regular session of 1987 of the Economic and Social Council, and during the forty-second regular session of the Assembly.

5. Thus, in accordance with paragraphs 3 and 4 of General Assembly resolution 41/151 and prior to the forty-second session of the Assembly, the Secretary-General transmitted the report of the Working Group on its work during its inter-sessional meeting from 1 to 12 June 1987 (A/C.3/42/1) to Governments, competent organizations of the United Nations system and international organizations concerned.

6. In pursuance of General Assembly resolution 41/151, the Working Group met at United Nations Headquarters from 22 September to 2 October 1987 under the chairmanship of Mr. Antonio González de León and the vice-chairmanship of Mr. Juhani Lönnroth. It held 16 meetings with the participation of delegations from all regions. An observer for the International Labour Organisation (ILO) also attended the meetings.

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

(a) Report of the open-ended Working Group during its inter-sessional meeting of June 1987 (A/C.3/42/1);

(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/Rev.1 and Rev.1/Corr.1 (Arabic, Chinese, English and Russian only));

(c) Text of the preamble and articles of the draft International Convention on the Protection of the Rights of All Migrant Workers and Their Families, adopted on second reading by the Working Group (A/C.3/42/WG.1/WP.1);

(d) Revised proposals for paragraphs 2, 3, 5, 6, 7 and 8 of article 17, submitted by Finland, France, Greece, Italy, the Netherlands, Norway and Yugoslavia (A/C.3/42/WG.1/CRP.1).

8. 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); A/C.3/40/1; A/C.3/40/6; and A/C.3/41/3);

(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 a 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);

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(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 of 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 of the draft International Convention, 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).

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

9. 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 III

Fundamental human rights of all migrant workers
and members of their families

10. At the beginning of the session the representative of the Federal Republic of Germany drew the attention of the Working Group to the fact that paragraph 8 of article 17, which was adopted by the Working Group on the second reading at its last session, was repeated as paragraph 8 of article 22. The Working Group then agreed to delete paragraph 8 of article 22.

Paragraph 6 of article 22

11. At its inter-sessional meeting from 1 to 12 June 1987, the Working Group decided to defer further consideration of paragraph 6 of article 22 to its present session because of lack of time.

12. The Working Group resumed consideration of that paragraph at its 1st and 3rd meetings, on 22 and 23 September 1987. The Working Group had before it a text for paragraph 6, which was contained in paragraph 144 of the Working Group's report (A/C.3/42/1) and which was amended to read:

"6. In case of expulsion, the person concerned shall, whenever practicable, have a reasonable period before or after departure to arrange the settlement of any claims for wages and other entitlements due to him and of any contractual liabilities."

13. The proposals and the result of the discussion relating to paragraph 6 were reflected in paragraphs 129 to 159 of the Working Group's report.

14. During the consideration of the paragraph, the representative of the United States of America suggested to replace the words "shall, whenever practicable, have a reasonable period before departure to arrange the settlement of any claim" by the words "shall have a reasonable opportunity to arrange the settlement ...". The representative of Australia expressed his support for that proposal. While agreeing with the proposal made by the representative of the United States, the representative of the Netherlands suggested to reword the phrase to read "to arrange to settle any claims". The representatives of Morocco, Yugoslavia and Greece stated that their delegations could accept the proposed amendment. Referring to the French version, the representative of Algeria insisted that she would prefer the words "délai raisonnable". The representative of Italy expressed

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his preference for a broader term; he therefore suggested to use the words "reasonable opportunity".

15. The representative of the Federal Republic of Germany reiterated his difficulty with the words "reasonable opportunity". He stated that in order not to block a consensus, his delegation would be satisfied with having its position reflected in the report. However, he proposed to retain his proposal as reflected in paragraph 139 of the Working Group's report, as follows:

"The competent authorities of the State concerned shall endeavour, at the time of the execution of a decision relating to the expulsion of a migrant worker or a member of his family, to take into consideration also any difficulties that may arise from the fact that the person concerned has not yet obtained the settlement of any claims for wages and other entitlements due to him by his employer or has not yet settled any contractual liabilities."

16. The representative of France voiced the difficulties of his delegation in retaining the words "or after". He proposed the deletion of those words. The representatives of the Netherlands and India objected to the deletion of those words. The representative of the Netherlands added that as the aim of the paragraph was to guarantee the settlement of the migrant worker's claim either before or after expulsion, it was important to keep the words "before or after".

17. While voicing concern over the expression "contractual liabilities", the representative of Botswana suggested to replace it by the words "pending liabilities".

18. After some discussion, the Working Group adopted paragraph 6 of article 22 as follows:

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him and any pending liabilities.

19. The delegation of France confirmed the reservation which it had expressed regarding the phrase "after departure". It believed that such a provision might create for the State which expelled the migrant worker the obligation to readmit him to its territory in order to settle his affairs. In its view, such readmissions were within the exclusive sovereignty of States and should not be covered in an international instrument.

Paragraph 10 of article 22

20. The Working Group resumed consideration of paragraph 10 of article 22, which it had left pending during its inter-sessional meeting from 1 to 12 June 1987 because of lack of time. The text for paragraph 10 was based on the proposed paragraph 10 as contained in paragraph 155 of the Working Group's report, amended to read as follows:

"10. Expulsion or departure from the receiving State shall not in itself prejudice any rights of a migrant worker or a member of his family acquired under the law, including the right to receive wages and other entitlements due to him."

21. The results of the discussion and the proposals relating to paragraph 10 of article 22 were reflected in paragraphs 155 to 159 of the Working Group's report.

22. During the consideration of that paragraph, the representative of the Union of Soviet Socialist Republics, for the sake of keeping harmony throughout the adopted texts, suggested that the words "receiving State" be replaced by the words "State of employment".

23. The representative of Italy proposed to replace the words "acquired under the law" by the words "acquired in accordance with the law of that State".

24. The Working Group accepted these amendments and adopted paragraph 10 of article 22 as follows:

10. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his family acquired in accordance with the law of that State including the right to receive wages and other entitlements due to him.

25. The representative of the Federal Republic of Germany stated that his delegation could only maintain its proposal set forth in paragraph 158 of the report of the Working Group; however, in a spirit of compromise, his delegation would not insist on the proposal, if it were duly reflected in the report. He proposed a new paragraph, which would become article 32, paragraph 1, to read as follows:

"Expiry of the stay of migrant workers and members of their families in the State of employment [or in the State of transit] shall not prejudice the rights acquired under the law of that State except in so far as the enjoyment or exercise of those rights is dependent on their residence in the State in question."

26. In view of the Working Group's decision to delete paragraph 8 of article 22 (see para. 10 above), the adopted paragraph 10 of article 22 would then become paragraph 9. The text of article 22 as adopted as a whole on the second reading, as follows:

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party to the present Convention only in pursuance of a decision taken by the competent authority in accordance with law.

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3. The decision shall be communicated to them in a language which they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The person concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason against his expulsion and to have his case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion which has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his family who is subject to such a decision may seek entry into a State other than his State of origin.

8. In case of expulsion of a migrant worker or a member of his family the costs of expulsion shall not be borne by him. The person concerned may be required to pay his own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his family acquired in accordance with the law of that State including the right to receive wages and other entitlements due to him.

Article 27

27. At its 1st meeting on 22 September, the Working Group considered a text for article 27 which it had left pending during its spring session, on the basis of article 27 as contained in paragraph 269 of its report (A/C.3/42/1), reading as follows:

"1. With respect to social security, migrant workers and members of their family who are documented or are in a regular situation will enjoy in the State of employment the same treatment granted to nationals, in accordance with the applicable legislation of that State. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine, if such is the case, the modalities of application of this norm.

"2. Migrant workers and members of their families who are in the State of employment without the required documentation or are in an irregular situation will enjoy only those benefits of social security for which they have contributed, solely to the extent that this is not precluded by the applicable legislation and as long as the irregularity of their situation so allows. Where the applicable legislation or specific circumstances do not allow them any benefits, the competent authorities shall examine the possibility of reimbursing persons concerned the amount of contributions made by them with respect to benefits they cannot enjoy, on the basis of the treatment granted to nationals who are in similar circumstances."

28. The representative of the Netherlands proposed to eliminate, in the second line of paragraph 1, the words "who are documented or are in a regular situation" and after the word "nationals" in the third line to insert the words "in so far as they fulfil the requirements in that State and the applicable bilateral or multilateral treaties".

29. The delegations of Italy, Australia and Denmark supported that amendment, saying that it made the text more precise.

30. The representative of Finland stated that, in view of the amendment proposed by the representative of the Netherlands, the first sentence in paragraph 2 should be deleted.

31. The representative of the Federal Republic of Germany stated that his delegation would prefer the wording of paragraph 1 as contained in document A/C.3/42/1, paragraph 269, but in order not to block consensus his delegation agreed to have its position reflected in the report. The representative of the United States proposed deleting the words "if such is the case" in the penultimate line of paragraph 1, saying that it did not seem to have any meaning.

32. The representative of Austria requested that the views of his delegation concerning article 27 be placed on record. In this connection he stated that with respect to paragraph 1 his country would have problems with the interpretation of the term "social security". This term would not only include social and unemployment insurance and family benefits, but also welfare services (in particular for war victims and for members of the armed services), as well as social assistance. While under the welfare law Austrian citizenship is required in order to obtain benefits, the social assistance laws of the individual provinces within Austria (Laender) provide that foreigners, like Austrians, get at least the standard insurance benefits (subsistence assistance). In the near future, however, the Laender are expected to change this legislation. He therefore suggested excluding the spheres of welfare services and social assistance from this article.

33. With respect to paragraph 2, he stated that in Austrian national law the social insurance system was based on the so-called insurance principle. Therefore, as regards social security, Austria had not been able to accept, in any bilateral agreement, the reimbursement of contributions. Austria could not therefore agree to such a requirement within the framework of the present Convention.

34. The representative of Spain expressed the concern of his delegation over the introduction of the concept of reimbursement of contributions with respect to benefits not enjoyed in the system of social security. He proposed the addition in paragraph 2, after the words "to benefits they cannot enjoy" in the penultimate line, of the words "subject to the relevant principles of national legislation". If the words were not included, he requested that note be taken of the uncertainty created for certain systems by the possibility of envisaging the reimbursement of contributions for benefits not enjoyed.

35. The representative of France stated that his delegation could not accept the first paragraph as proposed by the Chairman, which seemed to enjoy a broad consensus. Instead he formally reserved his country's position with regard to any reference to possible reimbursements of the social security contributions of migrant workers and, consequently, with regard to the whole of the second paragraph of article 27. The delegation of the United States shared the concern of the delegation of France in relation to reimbursement.

36. After some discussion and at that same meeting, the Working Group adopted article 27 to read as follows:

Article 27

1. With respect to social security, migrant workers and members of their families will enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a certain benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Article 32

37. At its 1st and 3rd meetings, on 22 and 23 September 1987, the Working Group resumed consideration of article 32, which it had postponed to the present session, on the basis of the text of article 32 as reproduced in paragraph 308 of the Working Group's report (A/C.3/42/1), as follows:

"Upon the termination of their stay in the receiving State all migrant workers and members of their families shall have the right to transfer any savings and to take with them all personal effects, working tools and other belongings."

38. The proposals pertaining to article 32 during the inter-sessional meeting of the Working Group in June 1987 were also reflected in paragraphs 308 to 311 of the report.

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39. During the discussion of this article, the representative of the Soviet Union explained the difficulty of his delegation with the term "belongings", as in his legislation there are certain items, in particular those relating to cultural heritage, which are not allowed to be exported. He suggested to include in the article a clause stating "in accordance with the applicable law of the State of employment".
40. The representative of France stated that he could accept the amendment in so far as the legislation of the State of employment could prohibit the exportation of certain items.
41. The representative of Tunisia declared his delegation to be in favour of retaining article 32 as it stood following the first reading. Nevertheless he would accept the inclusion of a subparagraph or a new article on the protection of goods forming part of the national heritage of any State.
42. The representative of Algeria said that she had difficulty accepting a restrictive provision which would prevent a migrant worker from taking with him any items acquired in a foreign country. In her opinion, a migrant worker was unlikely to carry back to his own country valuable items which were part of the national cultural heritage of the State of employment.
43. The representative of Ghana placed on record her objection to the wording of the article. She stated that her delegation felt that this right should be subject to the applicable currency regulations of the State of employment.
44. The representatives of Italy and Greece proposed to use the formulation of the provisions of article 17 of the European Convention on the Legal Status of Migrant Workers by including a clause stipulating that "Each State Party shall permit, according to the arrangements laid down by its legislation, the transfer of all or such parts of the earnings and savings of migrant workers as the latter may wish to transfer".
45. With reference to the text of article 32 as proposed for adoption, the delegation of France voiced its reservations and stated that it could not agree to the text. In its opinion, savings and earnings, as well as personal effects, could be transferred only "in the conditions and according to the arrangements laid down by the legislation of the State of employment". In the view of the French delegation, it could not be assumed that the reference to such national rules was implicit.
46. In the course of the adoption of the Working Group's report the delegation of Italy, on behalf of Greece, Spain, Australia and the United States, remarked that article 32 as approved obviously implied the application of such procedures, modalities and conditions as provided for by the internal law of the States concerned for the exercise of the rights it protects. Therefore the absence of an explicit reference to such procedures, modalities and conditions, such reference having been made in other provisions of this Convention (see art. 47), cannot be interpreted in the sense that article 32 obliges States parties to disregard them in the relevant cases.

47. Following the statement made by the representative of Italy on behalf of several countries, submitted for inclusion in the report, the delegations of Algeria and Morocco pointed out that the statement in question had not been made during the discussion on article 32, in the course of which only the representative of France had voiced the reservations of his country. The delegations of Algeria and Morocco expressed strong opposition to that move, which, they stressed, was highly irregular. They drew attention to the regrettable precedent that the proposed course of action would set for the Working Group and for the procedures of the United Nations. Although the representative of France, wishing to avoid controversy, had proposed that the statement should be attributed to the French delegation and that the delegation of Italy and other delegations which shared its views should endorse the statement during the consideration of the draft report, the Algerian and Moroccan delegations were neither convinced of the merit of nor satisfied by that solution. While reluctantly accepting it in the spirit of compromise, they believed that such a procedure, which tended to distort the discussions which had actually taken place in the Working Group, must not be repeated. The delegation of Mexico supported the views expressed by the delegations of Algeria and Morocco.

48. The representative of Sweden stated that when dealing with article 47, his delegation had pointed out that the second sentence of that article reading "such transfer should be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements" should also be added to article 32.

49. The representative of Egypt stated that the reference to the term "applicable legislation" concerned the procedures and should not affect the right of a migrant worker to take his savings and belongings. The representative of the USSR supported that statement.

50. The text of article 32 was adopted by the Working Group on second reading, as follows:

Article 32

Upon the termination of their stay in the State of employment, all migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

Article 33

51. At its 2nd and 3rd meetings, on 22 and 23 September, the Working Group considered a text for article 33 which it had left pending during its inter-sessional meeting from 1 to 12 June 1987, on the basis of article 33 as contained in paragraph 312 of its report (A/C.3/42/1), reading as follows:

"1. Migrant workers and members of their families shall have the right to be informed by both the State of origin and the State of employment concerning:

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"(a) Their rights arising out of the present Convention;

"(b) The conditions of admission, their rights and obligations under the law and practice of the receiving State and such other matters as will enable them to comply with administrative or other formalities in that State.

"2. Each State Party to the present Convention shall take the appropriate measures to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, it shall co-operate with other States concerned.

"3. The said information shall be provided to migrant workers and to members of their families, wherever possible free of charge, upon request and in their own language or in a language which they are able to understand."

52. The Working Group also had before it a number of proposals relating to that text made by representatives at its June session, which are contained in paragraphs 313 to 321 of its report (A/C.3/42/1).

53. During the discussion the representative of the Federal Republic of Germany reiterated that his delegation would prefer the rewording of paragraph 2 of article 33 as they had proposed in June and which would read as follows:

"In so far as the public authorities are generally required to inform individuals and in so far as it is possible and practicable, each State ..."

However, in a spirit of compromise his delegation would not hinder a consensus.

54. The representative of Australia reiterated the concern of his delegation reflected in paragraph 319 of document A/C.3/42/1 and supported the inclusion of a qualifying clause such as "in as far as possible" in paragraph 2.

55. The representative of Norway expressed the view of his delegation that the scope of this article was too far-reaching in requesting the State of employment to provide information.

56. The representative of the United States, supported by several delegations, said that each State party should be responsible for providing information to the migrant workers and hence proposed changing the words "receiving State" in paragraph 1 (b) to "State concerned". He also reiterated his delegation's proposal contained in paragraph 320 of the Working Group's report, that the verb "to provide" be replaced by "to make available".

57. Given the objections voiced by various delegations, the representative of Morocco suggested adding, in paragraph 2 of the article, the words "that it deems appropriate" after the word "information".

58. In an effort to reach a consensus, the Chairman suggested adding, in the first line of paragraph 2, the words "all measures they deem appropriate" after the word "take".

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59. At its 2nd meeting, on 22 September, the Working Group adopted article 33, paragraphs 1 and 2, reading as follows:

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

(a) Their rights arising out of the present Convention;

(b) The conditions of admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

2. Each State Party to the present Convention shall take all measures it deems appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate it shall co-operate with other States concerned.

Paragraph 3 of article 33

60. At its 2nd meeting, the Working Group took up consideration of paragraph 3 of article 33.

61. The representative of Finland expressed the view that the very idea of informing the migrant workers of their rights and obligations necessarily required that the information be provided in a language they were able to understand. Furthermore, the representative of Finland stated that the wording should not be interpreted in such a way that even very detailed information should be provided free of charge to the persons concerned.

62. The representative of the Netherlands, supported by the representative of Australia, expressed the concern that the provision contained in paragraph 3 requesting that States provide information free of charge would impose a burden on States.

63. The representative of Australia proposed the wording "shall take all possible and practical means".

64. The representative of the Netherlands supported the proposal made by the United States representative at the spring session to replace the verb "to provide" by "to make available".

65. The representative of India, supported by the delegations of Morocco and Algeria, stressed the importance of ensuring that information always be available to the migrant worker in a language he could understand and free of charge.

66. A number of delegations expressed the view that, while information of a basic and general character should be free of charge, it should not be incumbent upon States to provide all information to migrant workers in their own languages. In that connection, the representative of Norway said that in the view of his

delegation, the information required by a migrant worker was of a specific and not a general nature and that a Government could not always be expected to provide information to a migrant worker in his own language.

67. At its 3rd meeting, on 23 September, the Working Group resumed consideration of paragraph 3 of article 33.

68. At the beginning of the meeting the Chairman read out the text which had emerged from informal consultations, as follows:

"3. The appropriate information shall be provided upon request to migrant workers and members of their families, free of charge and, as far as possible, in a language which they are able to understand."

69. The representative of Finland, supported by the representative of Denmark, insisted that the information to be provided to migrant workers and members of their families must be in a language which they understand.

70. With a view to reaching a formulation which might meet the consensus, the representative of Morocco suggested a revision reading "in a language which they shall understand as far as possible".

71. While questioning the manner in which such information ought to be provided to migrant workers and members of their families, the representative of Yugoslavia expressed the difficulty of his delegation with the expression "as far as possible".

72. Some delegations raised their concern with respect to the interpretation of the expression "as far as possible". The representative of Italy suggested that perhaps an interpretation should be given by the Working Group in its report.

73. The delegation of the Federal Republic of Germany requested that it should be reflected in the report that his delegation could only accept a wording in which the expression "as far as possible" would refer to both the words "free of charge" and the words "in a language which they are able to understand". However, it would not press the point so as not to block a consensus.

74. The representative of Egypt suggested that the words "upon request" be deleted, because migrant workers may not be necessarily aware of the provisions of this Convention or any other pertinent laws or legislation.

75. While emphasizing that it was incumbent on the States concerned to provide information which migrant workers might need, the representative of Algeria stated that, in her opinion, the expression "appropriate information" was too ambiguous. She suggested that it should be replaced by the expression "adequate information". The representative of Italy stated his preference for the word "appropriate".

76. The representative of the Netherlands, supported by the representative of France, stated that he could go along with the text in an effort not to hinder the consensus although he would have preferred "made available" instead of "provided". While supporting that view, the representative of the United States stated, in a

spirit of compromise, that his delegation could accept the word "adequate" instead of "appropriate".

77. The representative of Yugoslavia placed on record his delegation's reservation about the inclusion of the notion "as far as possible" and the exclusion of the words "in their own language".

78. The representatives of the United States and the Netherlands stated that their delegations interpreted "adequate information" to mean general information. The representative of the United States also stated that, while his delegation would prefer that "as far as possible" apply to the provision of information, both free of charge and in a language understood by the migrant worker, his delegation would express its reservations in the report so as not to block consensus on this article.

79. The representative of Australia expressed the view that the text had remained too restrictive and imposed an unreasonable burden upon States.

80. At the 3rd meeting, the Working Group adopted paragraph 3 of article 33, as follows:

3. The adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language which they are able to understand.

81. The text of article 33 was adopted as a whole by the Working Group at the second reading, as follows:

Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

(a) Their rights arising out of the present Convention;

(b) The conditions of admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

2. Each State Party to the present Convention shall take all measures it deems appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, it shall co-operate with other States concerned.

3. The adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language which they are able to understand.

PART IV

Other rights of migrant workers and members of their families
in a regular situation

Part IV, Title

82. At its 4th meeting on 23 September, the Working Group started consideration of part IV of the draft Convention regarding rights of migrant workers and their families in a regular situation. The title of part IV as it had emerged from the first reading was as follows:

"Additional rights of migrant workers and members of their families
in a [regular situation] [lawful status]"

83. The Working Group adopted the title on second reading, as amended, following a proposal made by the delegation of France, as follows:

Other rights of migrant workers and members of their families
in a regular situation

Article 36

84. At the same meeting the Working Group considered article 36 on the basis of the following text which had been adopted at the first reading:

"Migrant workers and members of their families who are in a [regular situation] [lawful status] in the State of employment as regards their admission, [duration of] stay and [type of] employment [or other economic activity] [and other matters related to their immigration and employment status], as well as those whose situation has [been regularized,] [become lawful since entry into the State of employment] shall enjoy the rights set forth in part III, in addition to those set forth in part II."

85. The Chairman suggested the following formulation for article 36:

"Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in this part of the Convention in addition to those set forth in part III."

86. The representative of Norway placed on record the same statement that his delegation made with respect to article 33.

87. After a brief discussion, at its 4th meeting, on 23 September, the Working Group adopted article 36 as read out by the Chairman.

Article 37

88. At its 4th meeting, on 23 September, the Working Group considered article 37 on the basis of the following texts which had emerged from the first reading:

"[Each State Party to the present Convention shall be free to establish in its national legislation the criteria governing admission, duration of stay, type of employment [or other economic activity] of migrant workers and members of their families and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this Convention. Any conditions subject to which the admission, stay, [and] employment [or other economic activity] of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention.]"

"[Nothing in the present Convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment or other economic activity and all other matters relating to the immigration and employment status of migrant workers and members of their families] [subject to such limitations as imposed on it by this Convention or other rules of international law.]"

89. Preference was expressed in the Working Group to discuss the article on the basis of the right-hand column, while borrowing some elements from the left-hand column.

90. The representative of the Federal Republic of Germany suggested that the provision be transferred to part III of the Convention. He also suggested the deletion, from the text in the right-hand column, of the words "duration of" before "stay" and the replacement of the words "economic activity" by the words "remunerated activity". The representatives of Denmark, Australia and Italy stated that the provision in question would be more suitably placed in the part on "General provisions". The representative of the United States said it could also be placed in part I. Some delegations suggested the deletion of the last bracketed phrase from the right-hand column. Other delegations pointed out that, if the latter was accepted, they would wish to add to the text the second sentence of the left-hand column. The Chairman read out a possible revision of the second sentence, should the Working Group wish to adopt it:

"In implementation of this norm States Parties to the present Convention shall ensure that the application of this right shall not be such as to impair the rights and guarantees provided for in the present Convention."

91. The representative of the Netherlands stated that his delegation could support the text of the right-hand column, including the addition reading "subject to such

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limitations as imposed on it by this Convention or other rules of international law".

92. The representative of the Federal Republic of Germany stated that his delegation wanted to see the words "and all other matters" deleted from the text in the right-hand column. He also expressed the view that the word "immigration" was not appropriate. Besides, he stated that he could not accept the addition of the second sentence of the left-hand column. However, if the Working Group could not go along with those views, his delegation, in a spirit of co-operation, would not prevent consensus but wished its opinion reflected in the report.

93. The representative of Italy pointed out that the words "and all other matters relating to immigration" meant that each State was sovereign to adopt its immigration policy. He suggested the following formulation for the second sentence:

"Such legislation shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided in the present Convention."

94. In the light of the debate several delegations felt that article 37 did not seem indispensable in the Convention. At its 4th meeting, on 28 September, the Working Group decided to suspend discussion of the provisions of article 37, with the understanding that it might revert to it at a later stage.

95. In view of that decision, the Working Group continued its discussion of subsequent articles, renumbering them accordingly.

Article 37

96. At its 4th meeting, on 23 September, the Working Group considered article 37 on the basis of article 38 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin and the State of employment of all conditions applicable to their admission and particularly those concerning the duration of the stay authorized, employment which they may take up and economic activities in which they may engage as well as of the requirements which they must satisfy in the State of employment and the authority to whom they must address themselves for any modification of those conditions."

97. The representative of the Federal Republic of Germany pointed out that, given the similarity of article 37 to article 33, his delegation wished to record a similar reservation as in article 33 (A/C.3/42/1, para. 313). He also suggested deleting the words "duration of" before the word "stay", but would not insist provided that his position was reflected in the report. The representative of Australia recalled the position taken by his delegation with regard to article 33, to the effect that the provisions currently under consideration were too prescriptive and imposed an unreasonable burden upon States.

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98. The representative of the USSR suggested replacing the words "economic activities" by the words "remunerated activities". The representative of the United States suggested that the words "State of origin and the State of employment" be replaced by the words "State of origin or the State of employment, as appropriate".

99. At its 4th meeting, on 23 September, the Working Group adopted the following text of article 37, as amended:

Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements which they must satisfy in the State of employment and the authority to whom they must address themselves for any modification of those conditions.

Article 38

100. At its 5th meeting, on 24 September, the Working Group considered article 38 on the basis of the text of article 39 adopted at the first reading, as follows:

"1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent [for reasonably long periods] without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families [in particular those obligations stemming from their links with the State of origin].

"2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized."

101. With regard to paragraph 1, the representative of the Federal Republic of Germany expressed preference for the term "temporarily absent" instead of the phrase "absent for reasonably long periods", since it would be difficult to define the meaning of "reasonably". That view was shared by the representative of the United States.

102. The representative of Norway stated that his delegation would prefer the period of absence to be qualified. Further, he stated that in the case of migrant workers whose permission to work was limited in time, he interpreted the word "temporarily" to be less than half the period for which the migrant worker had obtained a working permit. Finally, the delegation of Norway stressed that the right to return to the country of employment would apply only if the offer of employment as well as the authorization to stay and work was still valid.

103. The representative of the United States stated that her delegation would not block consensus on the article. However, it shared the Norwegian representative's understanding regarding the inapplicability of the article in certain situations - for example, in the case of a person admitted for a particular job and a limited time period when the period for which such authorized absence was requested extended beyond the period of his admission.

104. As to the second bracketed phrase in paragraph 1, the representatives of the Federal Republic of Germany and Italy felt it was superfluous. The representatives of Yugoslavia and Algeria considered that the phrase was useful because it took into account family and other obligations in the State of origin. The representative of Spain suggested that the second bracketed phrase of paragraph 1 be either deleted or amended by using the term "private or special obligations". The representative of Greece stated that the provision should protect young men who went to their State of origin to fulfil their military obligations, i.e. they should be authorized to return to the State of employment. The Chairman suggested that the phrase in brackets could be simplified and replaced by the words "in particular in the State of origin".

105. At its 5th meeting, on 24 September, the Working Group adopted paragraph 1 of article 38 as follows:

Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

106. The representative of Morocco said that, in French, the last part of the second sentence should read "notamment dans leur Etat d'origine".

107. The representatives of France and Spain stated that, in their understanding, the text approved did not imply in itself the preservation of the labour contract or the reservation of a specific job for the migrant worker who was temporarily absent.

108. Referring to paragraph 2 of article 38, the representative of the Federal Republic of Germany stated that he preferred its deletion, but would not block consensus in the Working Group. The same view was expressed by the representative of the Philippines.

109. At its 5th meeting, on 24 September, the Working Group adopted paragraph 2 of article 38, without changes, as follows:

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Article 38

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

110. The text of article 38 (39 of the first reading) was adopted by the Working Group on second reading, as follows:

Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39

111. At its 5th meeting, on 24 September, the Working Group considered article 39 on the basis of article 40 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"1. Migrant workers and members of their families in a [regular situation] [lawful status] shall have the right to liberty of movement in the territory of the State of employment [and freedom to choose their place of residence there].

"2. The above-mentioned 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 the other rights recognized in the present Convention."

112. Regarding paragraph 1, the Chairman suggested that the first two bracketed phrases could be deleted. The representative of Finland suggested that the third bracketed phrase be maintained and aligned to the text of article 12, paragraph 1, of the International Covenant on Civil and Political Rights, i.e. it should read:

"... and freedom to choose their residence there."

113. At its 5th meeting, on 24 September, the Working Group adopted paragraph 1 of article 39, as amended, to read as follows:

Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

114. Referring to paragraph 2 of article 39, the representative of the Federal Republic of Germany said that in the French text the phrase "faire l'objet" should read "être l'objet". The representative of Tunisia said that the word "right" should be put in the plural.

115. At its 5th meeting, on 24 September, the Working Group adopted paragraph 2 of article 39 as follows:

Article 39

2. The above-mentioned rights 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 the other rights recognized in the present Convention.

116. At the same meeting the representative of the Federal Republic of Germany proposed a new paragraph 3 for article 39 inspired by article 4 of the Additional Protocol to the European Convention on Human Rights, reading as follows:

"3. In certain specified areas, the rights recognized in paragraph 1 may also be subject to restrictions which are provided for by law and justified by the public interest in a democratic society."

117. The representative of Morocco expressed her delegation's disagreement with the proposed new paragraph. She pointed out that any concerns of the Federal Republic of Germany could be covered by paragraph 2 of article 39. She stressed that the text proposed would deny the right proclaimed in paragraph 1. It was important for migrant workers to live in the same area if they wished so as to practise their common language and culture. Similar views concerning the proposal of the Federal Republic of Germany were voiced by Finland, the Soviet Union, Algeria, Australia, Yugoslavia and Greece.

118. The representative of the Federal Republic of Germany pointed out that the term "intérêt public" was not the same as "ordre public" covered by paragraph 2. If the Working Group could not go along with his proposal, his delegation wished to have the proposal reflected in the report.

119. The text of article 39 (40 of the first reading), as adopted by the Working Group, reads as follows:

Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The above-mentioned rights 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 the other rights recognized in the present Convention.

Article 40 (41 of the first reading)

120. At its 5th meeting, on 24 September, the Working Group turned to article 40, which it considered on the basis of the following text adopted at the first reading:

"1. Migrant workers and members of their families in [regular situation] [lawful status] shall have the right to freedom of association with others in the State of employment, including the right to form associations and trade unions, for the promotion and protection of their economic, social, occupational, cultural and other similar interests, [including the preservation of their [national identity], cultural identity and cultural and other similar links with the States of origin.]

"2. No restrictions may be placed on the exercise of these rights other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order (ordre public), [public health and morals] or for the protection of the rights and freedoms of others."

121. The representative of the Netherlands, referring to paragraph 1, said that the text as it stood was a step back from article 22 of the International Covenant on Civil and Political Rights. He proposed that the rest of the text after the words "trade unions" be deleted. The representative of the Federal Republic of Germany proposed that the wording of the Covenant (art. 22, paras. 1 and 2) be followed precisely. The representatives of Australia and France shared the view that the wording should be aligned to the Covenant.

122. The representative of Yugoslavia felt that the bracketed phrase at the end of paragraph 1 should be retained because it underlined the special needs of migrant workers. The representative of Finland pointed out that article 40 complemented article 26, already adopted, so there was no need to reproduce the language of the Covenant. Article 40 recognized the right of migrant workers in regular status to form trade unions and associations. If the bracketed phrase in paragraph 1 was retained, he wished to see the words "national identity" deleted and the words "States of origin" put in the singular.

123. The representative of Spain suggested the addition in paragraph 1 of the words "in accordance with domestic legislation". The representative of China underlined the importance of the article for collective bargaining by migrant workers and

proposed the addition of the phrase "in compliance with the legislation of that State" after "State of employment" and the deletion of the rest of paragraph 1.

124. The representative of Tunisia said that he favoured the deletion of article 40, since it dealt with situations provided for in article 26 as adopted and in article 36, which covered all categories of migrant workers.

125. The Working Group continued consideration of article 40 at its 6th meeting, on 24 September. The Chairman read out the following text which could form the basis of a consensus:

"In pursuing the protection of the economic, social, cultural and other interests, migrant workers and members of their families in a regular situation shall be able to establish their own trade unions and other associations of the nature contemplated in article 26. No restrictions may be placed on this right except those referred to in paragraph 2 of the same article."

126. The representative of Italy suggested the following reformulation of the first part of the above-mentioned text:

"Migrant workers and members of their families have the right to form associations and trade unions for the promotion and protection of their economic, social, cultural and other interests."

127. The representative of China recorded the reservation of his delegation concerning the right of migrant workers and members of their families to freedom of association, to the effect that the forming of trade unions should be in conformity with the legislation of the State concerned. The representative of Oman expressed his reservation about the recognition of the right to form trade unions and associations.

128. The representative of Morocco, supported by the representatives of Algeria and Yugoslavia, proposed the inclusion of the phrase "in the State of employment." She pointed out that the purpose of the article was to proclaim the right to form trade unions and associations in the State of employment, while the same right was guaranteed in the State of origin by the International Covenants.

129. Several delegations wished to have a second paragraph in article 40 along the lines of paragraph 2 of article 22 of the International Covenant on Civil and Political Rights.

130. The representative of Finland pointed out that, despite the addition of the words "State of employment" in article 40 of the present draft Convention, article 22 of the International Covenant on Civil and Political Rights would prevail for the migrant workers in their own countries.

131. The delegation of Tunisia stated that it interpreted the word "others" as having the same meaning as in article 26.

132. At its 6th meeting, on 24 September, the Working Group adopted article 40 on second reading, as follows:

Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

133. At its 7th meeting, on 25 September, the Working Group considered a text for article 43 on the basis of article 44 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"[1. Migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present Convention, in respect of

"(a) Access to educational facilities and institutions;

"(b) Access to vocational guidance and placement services;

"(c) Access to vocational training and retraining facilities and institutions;

"(d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;

"(e) Access to social and health services, [provided that the requirements for participation by nationals in schemes of the State of employment are met;]

"[1. Migrant workers in a [regular situation] [lawful status] shall enjoy [equality of treatment with nationals of the State of employment] [subject to the national legislation [of the State of employment] [subject to no limitations other than those provided for in the present Convention], [in particular in article 51, para. 2 (a)] in respect of

"(a) Access to educational facilities and institutions, subject to the admission requirements and other regulations of the facilities and institutions concerned;

"(b) Access to vocational guidance and placement services, subject to the resources of the State of employment;

"(c) Access to vocational training and retraining facilities and institutions, subject to the resources of the State of employment;

"(f) The exercise of trade union rights, including eligibility for office in trade unions, in bodies of an occupational, economic or social character, and in labour-management relations bodies, including bodies representing workers in undertakings;

"(g) Access to co-operatives and self-managed enterprises;

"(h) Access to and participation in cultural life.

"2. States Parties to the present Convention shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]"

"(d) Access to housing, [including social housing schemes,] and protection against exploitation in respect of rents;

"(e) [Access to social and health services,] [provided that the requirements for participation in schemes of the State of employment are met;]

"(f) The exercise of the right of freedom of association with others;

"(g) Access to and participation in cultural life.

"2. States Parties to the present Convention shall endeavour to facilitate effective equality of treatment to enable migrant workers in a lawful status to enjoy the above-mentioned rights subject to the terms of their stay under the national legislation of the State of employment [including opportunities for advancement] [wherever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.]"

134. Regarding the introductory phrase of paragraph 1 of the proposed article, the representative of the Federal Republic of Germany, supported by the United States, Australia and France expressed his preference for the text of article 45 to be based on the proposal contained in the right-hand column as it provides that migrant workers shall enjoy equality of treatment with nationals of the State of employment subject to the national legislation of that State. The representative of Finland opposed that suggestion. The representatives of Yugoslavia, the Netherlands and Greece stressed that their delegations could not accept any reference to national legislation in this paragraph because it would open doors for the State of employment not to allow migrant workers to enjoy equality of treatment with nationals.

135. As concerns the term "national legislation", the representative of Norway placed on record the interpretation of his delegation with respect to that term and stated that "equality of treatment with nationals" must be understood as the general treatment given to nationals. This was in contrast to any special rights

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or treatment a State may give to a certain group of nationals or nationals in a special situation.

136. After a lengthy discussion, and in an attempt to reach consensus, the Chairman, supported by several delegations, suggested to reword the introductory phrase to read:

"Migrant workers shall enjoy equality of treatment with nationals of the State of employment, in relation to: ..."

137. The representative of Australia noted that his delegation would seek to specify that certain of the rights contained in the article in question did not apply to "specified employment workers" when the Working Group came to consider part V of the Convention.

138. The Working Group decided to adopt the introductory phrase of paragraph 1 of article 43, as revised by the Chairman.

139. Turning to subparagraph (a), the representative of Finland suggested using the alternative formulation contained in the left-hand column. The representative of Italy proposed rewording the subparagraph to read "Access to educational institutions and services". The representative of the United States stated that her delegation would have difficulty with the word "services" in the proposal made by the representative of Italy without any qualification, because it might be interpreted to include financial assistance for education, and certain aliens in the United States, for example, might be ineligible for government-funded loans. The representative of the USSR pointed out some linguistic difficulties that his delegation would have with the proposal.

140. The representative of Sweden said that his delegation would have some difficulty with the proposed inclusion of the word "services" in the left-hand column. However, his delegation could accept the word "services" if it were included in the right-hand column which set some limitations. The representative of Finland stated that he could go along with the suggestion made by Sweden, to revert to the proposal in the right-hand column. However, in his view, the words "admission requirements" would be sufficient as a limitative clause because the addition of other restrictive criteria may create discrimination.

141. The representative of Norway stated that article 43 would only apply to a migrant worker continuing to be a migrant worker. Consequently, in his view, the article would neither enable nor allow them to change their status.

142. The representative of the Netherlands, supported by the representatives of Greece and Italy, proposed to delete the word "admission" and to reword the phrase to read "subject to the requirements of the institutions concerned". The representative of Algeria said that her delegation would have some difficulty with the deletion of the word "admission" because that might introduce other conditions which could lead to discriminatory treatment. In an attempt to reach consensus, the representative of Sweden suggested that the phrase read "institutions and services" and that the word "general" be inserted before the words "admission requirements".

143. After some discussion, the Working Group adopted the introductory phrase of paragraph 1 with subparagraph (a) as follows:

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

144. The delegations of Finland and Algeria placed on record their view that the addition of the criterion of admission requirements to paragraph 1 (a) concerning equal access to educational institutions must not authorize discrimination against migrant workers as regards admission requirements.

145. Turning to subparagraph (b), the representative of Finland, while objecting to any reference to the word "resources", suggested that the provision of the subparagraph should be based on the proposal contained in the left-hand column. Regarding subparagraph (d), the representative of Finland, supported by the delegation of Algeria, proposed deleting the brackets around the words "including social housing schemes".

146. The representative of the United States explained that his delegation would have some difficulty with the provision of the subparagraph because a person admitted temporarily to the United States for a specific job would not be able to avail himself of government placement services. In responding to that concern some delegations referred to certain provisions of the draft Convention which were specifically included to address certain categories of migrant workers. In that connection, the representative of Yugoslavia drew the Working Group's attention to paragraph 2 of proposed article 43 which set some limitation. In light of the comments made, the representative of the United States reserved the right to return to that provision during the consideration of part V relating to provisions applicable to particular categories of migrant workers and members of their families.

147. After some discussion, the Working Group adopted subparagraphs (b), (c) and (d) as follows:

(b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

148. Turning to subparagraph (e), the representative of Australia and various delegations sought clarification over the term "social services". In this context, the representative of Italy stressed that the provision should refer to schemes. The representative of the Federal Republic of Germany referred to the definition

contained in the European Social Charter regarding "social services", pointing out the distinction made between social security and social services.

149. After a brief discussion, the Working Group decided to adopt subparagraph (e) reading as follows:

(e) Access to social and health services, provided that the requirements for participation in schemes are met;

150. Concerning subparagraph (f), the Working Group decided to delete it.

151. In that regard, the representative of the Netherlands, supported by the delegation of Finland, expressed regret over the elimination of subparagraph (f) since in their view not all the elements it contained were included in other parts of the Convention.

152. With respect to subparagraph (g), which would become subparagraph (f), the representative of the Netherlands, explaining that employees would need a different working permit from employers, suggested adding, at the end of the subparagraph, a phrase reading "whose activities do not change their status as migrant workers, subject to the rules and regulations of the bodies concerned". While supporting the essence of that proposal, the representative of the United States suggested revising it to read "without implying a change of their migration status and subject to the rules and regulations of the bodies concerned".

153. The Working Group adopted subparagraph (g) as revised and subparagraph (h) as it stood, which became respectively subparagraphs (f) and (g) of paragraph 1 of article 43, reading as follows:

(f) Access to co-operatives and self-managed enterprises without implying a change of their migration status and subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

154. The Working Group took up paragraph 2 of article 43. During the discussion of the paragraph, various delegations expressed their preference for the discussion to be based on the proposal contained in the left-hand column. The representative of Morocco insisted that in the French version of the article, the present tense should be used instead of the future tense. The representative of the Federal Republic of Germany, while pointing out that in the English version, in the left-hand column it was only stated that "States Parties ... shall promote conditions to ensure effective equality of treatment", expressed his preference for the wording in the right-hand column which stipulated that "States Parties ... shall endeavour to facilitate equality of treatment".

155. After a brief discussion the Working Group adopted paragraph 2 as follows:

2. States Parties to the present Convention shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

156. At the end of the discussion, the Chairman drew the Working Group's attention to the fact that the proposal contained in paragraph 279 of the Working Group's report (A/C.3/42/1) would be taken up by the Group when it reached part VI of the Convention. The proposal reads as follows:

"1. States Parties to the present Convention shall co-operate to ensure the respect of maintenance obligations concerning children of migrant workers and to regulate the exercise of the rights of custody and access relating to such children.

"2. The rights of dependent children of migrant workers and members of their family to maintenance and to a family relationship, including the right of custody and the right of access, shall be recognized [respected] by the States Parties in accordance with applicable rules and regulations."

157. The text of article 43 (44 of the first reading) was adopted on second reading by the Working Group, as follows:

Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment, in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(e) Access to social and health services, provided that the requirements for participation in schemes are met;

(f) Access to co-operatives and self-managed enterprises without implying a change of their migration status and subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

2. States Parties to the present Convention shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

Article 41

158. At its 6th and 7th meetings, on 24 and 25 September, the Working Group considered a text for article 41 on the basis of article 42 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"[States of origin and States of employment shall collaborate with a view to facilitating, [without unreasonable restrictions,] [as provided for in their national legislation] the exercise by migrant workers and members of their families in a [regular situation] [lawful status] of the right:

"(a) To take part in the conduct of public affairs of their State of origin, directly or through freely chosen representatives;

"(b) To vote and to be elected at elections in their State of origin;

"(c) To have access, on general terms of equality, to public services in their country of origin.]"

159. At the Working Group's 6th meeting, the representative of Yugoslavia, supported by the representative of Greece, proposed to delete the words in brackets "without unreasonable restrictions", "regular situation", and "lawful status" and to remove the brackets surrounding the words "as provided for in their national legislation", maintaining those words in the text. He stressed the importance his delegation gave to the right to vote in elections in the State of origin for migrant workers.

160. The representative of the Federal Republic of Germany said that his delegation would prefer the deletion of the article from the text of the Convention as those matters pertained to consular arrangements made by the State of origin. However, in a spirit of co-operation, he would not block a consensus.

161. The representative of Australia expressed his concern at the potential obligation placed by the article on the State of employment. He expressed his view that matters such as the political relationship between a citizen and his Government and the access of a citizen to voting rights in his own country should be exclusively a matter for those two parties to resolve. It would be inappropriate to impose an obligation on second countries in that regard. In his view, in the item referring to collaboration between States of origin and States of employment, the article should refer only to States of employment "not obstructing" the exercise of political rights in the State of origin by migrant workers.

162. The representatives of the United States, Norway and France supported the view expressed by the representative of Australia.

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163. The representative of Italy supported the representative of Yugoslavia in maintaining that article in the Convention, but proposed placing the words "as provided for in their respective national legislation" at the end of the last sentence after the word "right" and maintaining the words "without unreasonable restrictions", inserting them in the third line after the word "exercise".

164. The representative of Tunisia stated that article 42 was unclear and open to misinterpretation. Furthermore, the implementation of that provision might result in interference in the internal affairs of States.

165. The representative of the Soviet Union stated that his delegation was also in favour of retaining the article in the text of the Convention and that it preferred the wording "States of employment shall collaborate with a view to facilitating the exercise". He said that his delegation agreed with the representative of Yugoslavia to delete the words "without unreasonable restrictions".

166. In light of the discussion the representative of Yugoslavia proposed to reword the text to read:

"States of origin and States of employment shall, in so far as possible and practical, collaborate with a view to facilitating the exercise by migrant workers and members of their families of that right as provided for in national legislations."

167. At the Working Group's 7th meeting, on 25 September, and after informal consultations, the Chairman read out a text which had emerged as a result of those consultations, as follows:

"Article 41

"1. In conformity with their national legislation migrant workers and members of their families shall have the right to participate in public affairs, to vote and to be elected at elections in their State of origin.

"2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights."

168. Commenting on that text the representative of the Netherlands expressed his doubts about the first paragraph. He would have preferred the wording of article 25 of the International Covenant on Civil and Political Rights. Nevertheless, he could agree with the text, on the understanding that the present article in no way limited the scope of article 25 of the aforesaid Covenant.

169. The representative of Algeria stated that she was uncertain about the relevance of the words "shall have the right to take part in public affairs". Furthermore, she believed that the systematic reference to the International Covenant on Civil and Political Rights could, in certain cases, cover situations that were unlikely to arise, such as that of a migrant worker living in the State of employment and participating in the public affairs of his country of origin. In her opinion, the only plausible situation was that in which the fulfilment by

migrant workers of their obligation to vote would be facilitated in the State of employment.

170. The representative of the Federal Republic of Germany suggested adding the words "which did not necessarily imply that voting procedures of the State of origin would be conducted in the State of employment".

171. The representative of Tunisia stated that his delegation, while joining in the consensus, felt the need to place on record its doubts about the exercise by migrant workers living abroad of the right to participate in public affairs. Although Tunisian law recognized that right in principle in the case of all Tunisian citizens living in Tunisia, his delegation felt that it was not appropriate to include in the Convention provisions which, although taken from the covenants on human rights, did not square completely with the objectives of the Convention.

172. The representative of the United States, supported by the representative of Norway, expressed the concern of her delegation regarding the obligation which might be imposed upon the State of employment by the use of the word "facilitate". Her delegation would have preferred the term "will not impede". She further stated her delegation's understanding that, in the absence of specific legislation on the subject, that provision did not impose any positive obligation on the State party to take active measures, for example, setting up voting booths within its territory.

173. At the Working Group's 7th meeting, on 25 September, article 41 was adopted as a whole, reading as follows:

Article 41

1. In conformity with their national legislation migrant workers and members of their families shall have the right to participate in public affairs, to vote and to be elected at elections in their State of origin.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Article 42

174. At its 7th and 8th meetings, on 25 September, the Working Group considered a text for article 42 on the basis of article 43 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"1. States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of the special needs, aspirations and obligations of migrant workers and members of their families.

"2. [States of employment shall facilitate the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.]

"2. [States of destination reserve the right to permit or not to permit, to the extent provided for in their internal legislation, the participation of migrant workers in public activities or in administrative decision-making.]

"3. [Migrant workers shall enjoy political rights in the State of destination only to the extent that that State, in the exercise of its sovereignty, may grant them such rights.]"

175. The Chairman then read out the following amendments to article 42 suggested as a result of informal consultations:

(a) The first paragraph would remain as it stood;

(b) In the second paragraph, using the text in the left-hand column the words "in accordance with national legislation" would be added after the word "facilitate" in the second line;

(c) In the third paragraph, the brackets should be deleted and "State of destination" changed to "State of employment".

176. The representative of the Federal Republic of Germany recalled that in the first paragraph, the word "the" should be deleted before the words "special needs".

177. The representative of the United States, supported by the representative of the Federal Republic of Germany, proposed for clarity's sake to add the words "including those covered by paragraph 2 of this article" in the third paragraph of the article.

178. The representative of the Netherlands proposed adding a second sentence to the first paragraph reading as follows:

"Where appropriate migrant workers and members of their families shall have the right to have their own freely chosen representatives in those institutions".

179. The representative of Italy stated that in his view the proposal of the representative of the Netherlands completed the concept expressed in paragraph 1. Regarding the proposal made by the representative of the United States, he said that in his view it was not necessary, considering the content of paragraph 2. The representative of Greece supported the representative of Italy concerning the proposal of the United States.

180. The representative of Norway, speaking on paragraph 1, stated that the Netherlands proposal could not be understood as giving precedence to the establishment of institutions with representatives chosen by and among the migrant workers, superseding the alternative "procedures".

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181. The delegation of France, supported by the representative of the United States, stated that it could accept the wording of paragraph 2 subject to the following reservation: the words "in accordance with national legislation" should be replaced by the words "to the extent that their laws permit". Since that proposal had not been accepted by other delegations, the French delegation requested that it be reflected in the report.

182. At the 7th meeting, on 25 September, article 42, paragraphs 1 and 2, were adopted reading as follows:

1. States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

183. A number of delegations, including those of Morocco, Algeria, Tunisia and Ghana, were in favour of deleting paragraph 3 in its entirety from the Convention in view of the adoption of article 41, which dealt with the question of the political rights of migrant workers.

184. A number of other delegations, including those of the Federal Republic of Germany, Mexico, Venezuela, Australia, France, the United States, Argentina and Italy insisted on retaining the paragraph in the text.

185. In order to arrive at a consensus the representative of France proposed deleting the words "political rights" in the first line. The representative of Australia proposed adding the word "not" after the word "shall" and replacing the word "only" by the word "except". The representative of the Netherlands opposed the suggestion of the representative of France, stating that in his country migrant workers had certain political rights such as the right to vote in local elections. The representative of Yugoslavia opposed the proposal of the representative of Australia saying that in his view it inferred a negative approach to the granting of a right to a migrant worker.

186. In an effort to reach a consensus on paragraph 3 the Chairman suggested resorting to informal consultations on the matter.

187. At its 8th meeting the Working Group resumed consideration of a text for article 42, paragraph 3. As a result of the informal consultations, the Chairman read out the following text suggested for paragraph 3:

"3. Migrant workers may enjoy political rights in the State of employment only to the extent that that State, in the exercise of its sovereignty, grants them such rights."

188. Speaking on this proposal, the representative of Morocco stated that the Moroccan delegation, while agreeing not to upset the consensus which had been reached on article 42, paragraph 3, held that that provision did not in any way imply encouragement to migrant workers and members of their families to engage in political activities within the jurisdiction of the country of employment, which was incompatible with the purpose of the Convention and the status of migrant workers in the country of employment.

189. The representative of the Federal Republic of Germany expressed the view of his delegation that under the provisions of the Basic Law of the Federal Republic of Germany, the right to vote fell into the category of political rights, whether it was exercised at the local, the regional or the federal level. Accordingly, the delegation of the Federal Republic of Germany interpreted article 42, paragraph 3, as referring to the right to vote irrespective of the level at which it was exercised.

190. In that connection the representative of Tunisia said that the Tunisian delegation had not opposed the adoption of article 42, paragraph 3. However, it wished to state its reservation with respect to that provision on the ground that it was incompatible with the purpose of the Convention, which was to deal solely with problems specific to migrant workers. Moreover, the Tunisian delegation considered that the provision in question did not in any way imply the obligation for migrant workers to engage in political activities in third countries.

191. The representative of the Netherlands stated that although his delegation did not wish to block any consensus on the article, it did express its regret as to the rather limited character of the version as adopted. It especially did not deem it necessary to include in paragraph 2 any reference to national legislation. Moreover, it agreed to paragraph 3 only on the understanding that it in no way limited the scope of paragraph 2.

192. The representative of the United States stated for the record her delegation's understanding that the limitations on political rights of migrant workers in the State of employment provided for by paragraph 3 applied to any political rights that might arise out of the previous paragraphs.

193. At its 8th meeting, on 25 September, the Working Group adopted paragraph 3 of article 42 reading as follows:

3. Migrant workers may enjoy political rights in the State of employment only to the extent that that State, in the exercise of its sovereignty, grants them such rights.

194. The text of article 42 (43 of the first reading) was adopted as a whole on second reading, as follows:

Article 42

1. States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment only to the extent that that State, in the exercise of its sovereignty, grants them such rights.

Article 44

195. At its 9th and 13th meetings, on 28 and 30 September, the Working Group considered a text for article 44 on the basis of article 45 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"1. State Parties to the present Convention [, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,] shall take appropriate measures to ensure the protection of the unity of families of migrant workers in a [regular situation] [lawful status], equal to that given to nationals.

"2. Spouses and minor dependent unmarried sons and daughters [of migrant workers] shall be authorized to accompany or join migrant workers and to stay in the State of employment for a duration not less than that of the worker, subject to [procedures prescribed by] the [national] legislation of the State of employment or [applicable] international agreements. States of employment may make this authorization subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned. The process of verifying that such conditions are met shall be completed within a reasonable period.

"3. States of employment shall [favourably] consider the admission of other [dependent] family members on humanitarian grounds."

196. During the discussion the representative of Australia proposed the deletion of the words "equal to that given to nationals" in the last line of paragraph 1, noting that equality of treatment with nationals could not always be guaranteed in that area, for example, in expulsion proceedings.

197. The representative of the Federal Republic of Germany also stated that his delegation would have the same problems with the text as proposed. He suggested amending the text to read:

"States Parties to the present Convention [, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State,] shall, to the extent possible, give favourable consideration to the admission of spouses and minor dependent unmarried children. Authorization for such admission may be subject to the condition that the migrant worker has available appropriate accommodation and resources to meet the needs of the persons concerned."

198. The Chairman, supported by several delegations, drew the Working Group's attention to article 4, which had been adopted by the Group on second reading and which contained a definition of the concept of "members of the family" and "dependent children" and pointed out that objections to those provisions might result in opposing a family reunion.

199. After some discussion, the Working Group agreed to proceed paragraph by paragraph.

Paragraph 1

200. Turning to paragraph 1 the Chairman suggested keeping the words "in a regular situation" without brackets and deleting the words "lawful situation" as the Working Group had agreed to do in other parts of the draft Convention. He further suggested that the sentence "recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State" could also be deleted.

201. The representatives of the Netherlands and Italy supported that suggestion. The representative of Italy stressed that it would be more appropriate in the view of his delegation to speak of "the unity of the family of the migrant worker" in the singular form in that context rather than the "unity of the families of migrant workers" as contained in the text.

202. The representative of the United States, while endorsing the proposal made by Italy, stated that his delegation, because of its national legislation governing the admission of aliens, would have difficulty with the term "equal that given to nationals". He therefore proposed its deletion. The representative of Greece, while supporting the proposal made by Italy, said he could not accept the deletion suggested by the United States. The representative of France stressed the words "mesures voulues" should be replaced by the words "mesures appropriées" in the French text.

203. The representative of Finland expressed the view that the principle enunciated in paragraph 1 would have found a more appropriate place if it were contained in a preambular paragraph, reading as follows:

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"Recognizing that, as the family is the natural and fundamental group unit of society, the family of the migrant worker is entitled to protection."

204. The representative of Algeria objected to the deletion of that principle from paragraph 1 and to the deletion of the term "equal to that given to nationals".

205. The representatives of Morocco and Tunisia emphasized that their delegations insisted on maintaining, in paragraph 1 of article 44, the principle enunciated in article 16 of the Universal Declaration of Human Rights and in article 23 of the International Covenant on Civil and Political Rights. In their opinions, the retention of that principle was necessary because it established the right of the family to protection by the State and, consequently, justified the requirement laid down in the article, namely, that States must ensure the unity of the family and hence family reunification.

206. After some discussion, the Working Group adopted paragraph 1 of article 44 as follows:

1. States Parties to the present Convention, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the family of the migrant worker.

207. The representative of the Netherlands stated that his delegation would have preferred the deletion of the reference to the family as being the natural and fundamental group unit of society. It deemed that reference to be superfluous and of a too philosophical nature in order to be included in the paragraph. It would however, not stand in the way of any consensus, and accepted the text on the understanding that the notion of "family" should be interpreted in a dynamic sense leaving room for any kind of relationship which, according to applicable law, produced effects equivalent to marriage which was in accordance with the definition as contained in article 4 of the draft Convention.

Paragraph 2

208. In the course of discussion of that paragraph, the Chairman pointed out that the term "dependents" should be translated by the Spanish word "dependente".

209. The representative of Italy, supported by the representative of the United States, stated that there was no need to maintain brackets around the words "of migrant workers" and that those terms should be deleted as they were repeated in the second line.

210. The representative of Greece, supported by the representative of Norway, said that there was a need to include a reference to national legislation. The representative of Finland stated that the concern of the delegation of Norway could be taken care of by the accepted definition of the concept of "family". However, while pointing out the language discrepancies in the paragraph, he stressed that his delegation would have preferred the use of the singular form throughout the text and that the words "sons and daughters" should be replaced by the word

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"children". The representative of Norway added that he would be unable to join the consensus unless the paragraph contained a reference to national legislation, as Norway could not accept any obligation to allow reunification with more than one spouse or with more than one family.

211. While sharing the proposal made by the representative of Norway and supported by the delegation of the United States, the representative of France suggested: "subject to the conditions laid down in national legislation". The representative of the United States suggested using "subject to the conditions and procedures".

212. The representative of Morocco stressed that paragraph 2 was already too restrictive and that her delegation could not accept any further restrictions to the applicability of the provisions of the paragraph. The representative of Algeria, while sharing that view, stated that her delegation could not accept the proposal made by the United States.

213. The representative of the Soviet Union proposed that the words "subject to" should be replaced by the words "in accordance with" and the word "conditions" replaced by the words "procedures prescribed by law".

214. After a lengthy discussion, the Working Group decided to suspend consideration of paragraph 2 and to hold informal consultations.

215. At its 13th meeting on 30 September, the Working Group reverted to its examination of paragraph 2 of article 44. The Chairman announced that, after long consultations, the following text had been formulated which could form the basis of a consensus:

"2. States Parties to the present Convention shall take measures which they deem appropriate and which fall within their competence to facilitate the reunion of migrant workers with their spouses or persons who have with them a relationship which, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children".

216. The representative of the United States stated that his delegation could join a consensus on that provision, although it would have preferred the use of the word "may" rather than "shall". He also explained that the principle of family reunification was a very important element of United States immigration policy. He felt that a statement of general principle regarding family reunification of migrant workers would be a useful contribution to the text, but that the sovereign right of States to establish their own immigration policies had to be protected. He emphasized his delegation's understanding that the provision in no way prejudiced that sovereign right. As a linguistic modification to the text read out by the Chairman he suggested to replace the word "reunion" by the word "reunification".

217. The delegations of Algeria, Morocco, Egypt, Oman and the United Arab Emirates requested to have recorded their formal reservation as to the inclusion in paragraph 2 of article 44 of the phrase "or persons who have 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 constituted 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 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 absolutely void. In the course of the adoption of the present report, the delegations of Bahrain, Côte d'Ivoire, Ghana, Jordan, Iraq, the Libyan Arab Jamahiriya, Pakistan, Saudi Arabia, Senegal, Somalia and the Sudan supported that formal reservation.

218. The representative of the Federal Republic of Germany stated that his delegation would not go beyond the formulation that he had put forward at the previous meeting. However, in a spirit of co-operation he would not block consensus regarding that provision.

219. The representative of Morocco stated that she would have preferred the ILO text reinforced by the word "shall" instead of "may". The representative of Norway stated that his delegation understood the text as a statement of guidance only, and not as imposing any obligations on the State of employment, leaving the family reunification subject to the legislation of the State of employment; the Norwegian delegation could join the consensus on that understanding.

220. The representative of the Philippines suggested a linguistic modification, i.e. to amend the phrase "persons who have with them a relationship" to read "persons who have with the migrant workers a relationship".

221. The representative of Sweden stated that paragraph 2 of article 44 did not oblige the Swedish authorities to allow reunification in cases where the spouse of the migrant worker was a minor only on the ground that they were legally married.

222. The representative of France stated that his delegation would join the consensus, but would interpret the provision as meaning that the State of employment might, according to its legislation, set conditions to family reunification, namely in terms of duration of stay of the migrant worker in the State of employment before his family arrived, as well as in terms of housing and resources.

223. The representative of Venezuela said that he had certain reservations concerning paragraph 2 of article 44 because the formulation arrived at did not make it clear that the definition of "minor" should be in accordance with the legislation of the State of employment.

224. At its 13th meeting, on 30 September, the Working Group adopted on second reading paragraph 2 of article 44 as read out by the Chairman and amended by the representatives of the United States and the Philippines, as follows:

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2. States Parties to the present Convention shall take measures which they deem appropriate and which fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship which, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

225. The representative of India placed on record the reservations of her delegation that the nature of the ties of marriage and of family relationships and the rights which they conferred could not, under any circumstance, be put on an equal footing with the situation envisaged by paragraph 2 by Indian personal law; any situation arising outside the scope of that definition, and any relations contracted outside the legal ties of marriage were legally not recognized and the effects thereof were void.

Paragraph 3

226. The Working Group considered a text for paragraph 3 at its 9th meeting, on 28 September.

227. During the discussions, the delegation of the Netherlands, supported by the delegations of Ghana, Denmark, Morocco and Algeria, insisted in retaining the word "favourably" in the text without brackets. The representative of Australia stated that his delegation would have preferred the deletion of that term.

228. The representative of the Netherlands proposed either deleting the words "favourably" and "dependent" or keeping them both in the text as he did not want one word without the other.

229. The representatives of the United States, France and Australia placed on record the reservation of their delegations regarding the inclusion of the word "favourably".

230. With respect to the word "admission", the representative of Morocco stated that it in no way implied that other family members of migrant workers would have the right to remain in the State of employment. She proposed adding the words "and the stay" after the word "admission".

231. The representatives of Greece and Pakistan suggested the deletion of the word "dependent" as, in their views, it was superfluous in the paragraph because the words "other family members" appearing in the text already included "dependent".

232. After some discussion, the Working Group adopted paragraph 3 as follows:

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2, to other family members of migrant workers.

233. The text of article 44 was adopted on second reading, as follows:

Article 44

1. States Parties to the present Convention, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the family of the migrant worker.

2. States Parties to the present Convention shall take measures which they deem appropriate and which fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship which, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2, to other family members of migrant workers.

Article 45

234. At its 10th and 11th meetings, held on 28 and 29 September respectively, the Working Group considered a text for article 45 on the basis of article 46 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"Article 45

"1. Members of the family of migrant workers in a [regular situation] [lawful status] shall enjoy equality of treatment with nationals of the State of employment, subject to no limitations other than those provided for in the present Convention, in respect of:

"(a) Access to educational facilities and institutions;

"(b) Access to vocational guidance and training facilities and institutions;

"(c) Access to social and health services;

"(d) Access to and participation in cultural life.

"2. States of employment, [provided that the requirements for participation in schemes of the State of employment are met,] [in accordance with their national circumstances and legal systems,] shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at [facilitating the integration of children of migrant workers in the local school system, particularly in respect of the teaching of the local language] [securing the same rights and opportunities enjoyed by children of the State of employment concerning access to all systems, forms and degrees of education by facilitating the learning of the local language].

"3. States of employment shall endeavour, as far as practicable and [where appropriate] in collaboration with States of origin, to facilitate for the children of migrant workers the teaching of their mother tongue and culture.

"[4. States of employment shall provide, as far as practicable, special schemes of education in the mother tongue of children of migrant workers, at least at the primary level.]"

235. At its 10th meeting, the Chairman reminded the Working Group that the text for article 45 should be read in conjunction with the text the Group had adopted for article 43 and with the portion of the draft Convention relating to members of the family.

236. Speaking on the article, the representative of the Federal Republic of Germany proposed that the same limitation that his delegation had suggested for article 43, paragraph 1, namely the words "subject to the national legislation of the State of employment", should be included in article 45, paragraph 1. Since the Working Group had not adopted the proposal for article 43, the delegation of the Federal Republic of Germany would not press its proposal with respect to article 45. However, it wished its position to be reflected in the report.

237. The representative of the United States of America stated that, while his delegation would not block consensus on the article, like the Federal Republic of Germany, it would prefer that the rights enumerated in this article should be "subject to the national legislation of the State of employment".

238. The representative of the Netherlands stated his delegation would prefer to adhere as closely as possible to the wording contained in article 43.

239. The representative of France said that his delegation had difficulty with the idea that family members of the migrant worker admitted to the State of employment on humanitarian grounds should enjoy all the rights covered by article 45, in particular access to vocational guidance and training facilities which might imply the right to work.

240. The representative of Australia stated that his delegation could accept article 45 on the basis that it would argue for the elimination of certain of these rights in part V for workers specified as "special employment workers".

241. The representative of Italy proposed inserting the words "in the State of employment" in paragraph 1 of article 45 in order to make the text more precise. The representatives of Morocco and the United States also expressed support for that proposal.

242. The representative of Ghana, speaking on the introductory phrase in paragraph 1, said that because of its national circumstances, the delegation of Ghana could not accept the idea of "equality of treatment with nationals" as stated in the old article 46, because it could not guarantee such equality at all times.

243. After some discussion it was decided that subparagraph (a) of paragraph 1 should follow the same text as was adopted for article 43 and, at its 10th meeting, the Group adopted the introductory phrase and paragraph 1 (a) to read as follows:

1. Members of the family of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

244. Speaking on subparagraph (b), the representative of the United States said that in his country family members of a migrant worker and others on non-immigrant status may need different types of permits in order to work. Therefore, his delegation proposed adding the words "provided that the requirements for participation are met" at the end of subparagraph (b), explaining that in the United States a non-immigrant, for instance a temporary migrant worker's family, might not be authorized to work and would therefore be ineligible to participate in certain government sponsored vocational training programmes.

245. Paragraph 1 (b) was adopted as amended, reading as follows:

(b) Access to vocational guidance and training institutions and services provided that the requirements for participation are met;

246. Speaking on subparagraph (c), the representative of the United States, supported by the representative of Norway, said that the wording should be the same as in article 43, paragraph 1 (e).

247. Paragraph 1 (c) was adopted, reading as follows:

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met:

248. Paragraph 1 (d) was then adopted, reading as follows:

(d) Access to and participation in cultural life.

249. The representative of Senegal expressed reservations over the additions made in subparagraphs (b) and (c) as a result of the United States amendment because, in his view, they appeared superfluous in the light of the introductory phrase of the paragraph, which already referred to equality of treatment, because they were too broad and might vitiate the right itself, and lastly because they were too vague and did not refer to any definite or identified régime.

250. Speaking on paragraph 2, the Chairman suggested eliminating the words contained in the first, second and fourth brackets and removing the third set of brackets, retaining those words.

251. The representative of Morocco stressed the importance in the State of employment of trying to integrate the children of migrant workers into the school system. She was in favour of eliminating the words in the first, second and fourth set of brackets as well as deleting the words "... where appropriate in collaboration within the State of origin". She suggested that the word "collaboration" might be changed to "consultation".

252. The representative of Norway, supported by the representative of the United States, stated that he understood the clause "where appropriate in collaboration with the States of origin" to leave the initiative for any kind of collaboration to the discretion of the State of employment.

253. Paragraph 2 was then adopted reading as follows:

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

254. Speaking on paragraph 3, the representative of the Netherlands suggested deleting the words "as far as practicable" and maintaining the words "where appropriate".

255. The representative of Yugoslavia proposed merging paragraphs 3 and 4 together into one single paragraph to read as follows:

"States of employment, in collaboration with States of origin, shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture, and shall provide, as far as practicable, special schemes of education for that purpose, at least at the primary level."

256. Speaking on that proposal, the representative of the Federal Republic of Germany said that his delegation would prefer to maintain the two paragraphs separately and to retain the words "as far as practicable" in paragraph 3.

257. The representative of the Netherlands, supported by the representative of Finland, said that his delegation did not think it necessary to combine the two paragraphs. The idea expressed in paragraph 4 was especially important for his delegation given the difficulty for Dutch children abroad to receive instruction in the Dutch language.

258. Speaking on paragraph 3, the representative of Norway said that in the view of his delegation collaboration between the State of employment and the State of origin should be at the discretion of the State of employment.

259. The representative of Finland suggested adding the words "as appropriate" after the first comma in paragraph 3 to convey the idea that the State of employment was invited to collaborate with the State of origin but not obliged to do so.

260. The representative of the United States said that her delegation could not support the idea originally contained in paragraph 4 and now coming after the word "culture" in the proposal by Yugoslavia which called upon States of employment to provide schemes of education in the mother tongue. Her delegation could join a consensus on the first part of the Yugoslavian proposal and on paragraph 3 as it stood, but could not do so on paragraph 4.

261. The representative of Italy suggested using the words "States of employment may provide", rather than "shall provide" in the proposal by Yugoslavia, which would introduce the concept in the form of a recommendation but not an obligation on the States of employment.

262. In an effort to reach a consensus on paragraphs 3 and 4, the Chairman suggested that the Working Group should meet in informal consultations in order to come up with a satisfactory text.

263. At its 4th meeting, on 29 September, the Working Group resumed consideration of a text for article 45, paragraphs 3 and 4. The Chairman read out a text for those paragraphs which had emerged as a result of the informal consultations as follows:

"3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

"4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin."

264. Speaking on paragraph 3, the representative of the United States stated that his delegation could join a consensus on this compromise text, but wanted the record to reflect that it understood paragraph 3 not as imposing an affirmative obligation on Member States to teach other languages, but only to endeavour to make the teaching of such languages possible.

265. Speaking on paragraph 3, the representative of the Federal Republic of Germany stated that his delegation could not accept the deletion of the words "as far as practicable" since States of employment could not be required to provide teaching of the mother tongue in all cases. His delegation regrettably had to place on record its disagreement with the wording adopted in the report, since teaching of the mother tongue was very widely catered for in the Federal Republic of Germany.

266. The representative of France said that his delegation regretted the approach which the Working Group had taken in drafting the two paragraphs. While a great many children of migrant workers were provided with teaching of their culture and mother tongue in France, such instruction was not a matter for States of employment to initiate, but rather it was exclusively for countries of origin to promote, often in co-operation with countries of employment.

267. Paragraph 3 was then adopted at that same meeting, reading as follows:

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3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

268. Speaking on paragraph 4, the representative of the Federal Republic of Germany said that his delegation could not accept the paragraph since it would open the door to the principle of national classes in educational establishments, a principle which was at variance with the concept of integration. Nevertheless, his delegation would not oppose the consensus if its position was duly reflected in the report.

269. Paragraph 4 was adopted reading as follows:

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

270. The text of article 45 (46 of the first reading) was adopted as a whole on second reading, as follows:

Article 45

1. Members of the family of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

Article 46

271. At its 11th and 12th meetings, on 29 September, the Working Group considered a text for article 46 on the basis of article 47 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"[1. At the time of their admission to the territory of the State of employment or of the regularization of their situation, migrant workers and members of their families in a regular situation shall enjoy exemption from customs duties in respect of their personal effects and in respect of portable hand-tools and portable equipment of the kind normally required for the carrying out of their trade or occupation.]

"[1. At the time of their initial admission to the territory of the State of employment, migrant workers and members of their families shall, subject to the applicable laws and regulations of the State of employment as well as relevant international agreements, enjoy exemption from customs duties in respect of the equipment necessary to perform the trade or occupation for which they are admitted to the State of employment.]

"2. [The same exemption to migrant workers and members of their families shall be accorded by the State of return at the time of their final return.]"

272. The representative of Denmark, on behalf of the European Community, stated that article 46, which dealt with customs problems, contained a number of elements relevant for Community regulations and Community competence. He would therefore prefer a text which took that into account. He added that any contributions from Community member States during the debate in the Working Group on that article should be seen in that light.

273. Regarding the proposal for paragraph 1 contained in the left-hand column, the representative of Norway stated that he could not accept any reference to portable hand tools because professional equipment to be taken back by migrant workers had already been covered under ILO Convention No. 97. He proposed the following formulation for article 46, paragraph 1:

"At the time of their first admission to the territory of the State of employment, migrant workers and members of their families shall enjoy exemption from customs duties in respect of their used household effects and similar movable goods."

274. The representative of the Federal Republic of Germany stated that his delegation would prefer the discussion to be based on the proposal contained in the right-hand column as it did not contain any specific references to personal effects, portable hand tools and portable equipment of migrant workers, but rather mentioned instead the equipment necessary for the performance of their trade or occupation.

275. As various delegations agreed to proceed with the proposal for paragraph 1 in the right-hand column, the representative of Italy, supported by the representative

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of France, suggested adding the words "and the obligations of the States concerned arising out of their participation in customs unions", after the words "international agreements".

276. The representative of Greece stated that his delegation would prefer a reference to portable hand tools in the proposed article. In that connection, the representative of the USSR, while expressing his delegation's preference that the article should spell out that personal effects of migrant workers should not be taxable, stated that his delegation would have difficulty with the words "to perform the trade and occupation for which they are admitted to the State of employment". With reference to the text of article 2 adopted on second reading, he suggested using the term "remunerated activity".

277. The representative of the Netherlands proposed replacing the words "exemption from customs duties" by the term used in article 7 of the European Convention on the Legal Status of Migrant Workers, such as "exempt from import duties and taxes".

278. In accepting the proposals made respectively by the USSR and the Netherlands the Working Group agreed at the first stage on a paragraph 1 as follows:

"1. At the time of their initial admission to the territory of the State of employment, migrant workers and members of their families shall, subject to the applicable laws and regulations of the State concerned as well as relevant international agreements and the obligations of States concerned arising out of their participation in customs unions, enjoy exemption from import duties and taxes, in respect of their personal household effects, as well as the equipment necessary to engage in their remunerative activities for which they are admitted in the States of employment."

279. The representative of Norway stated that his delegation could accept no exemption from customs duty for professional tools. However, as the paragraph had a reference to the applicable laws and regulations of the State concerned, his delegation could join consensus as the text imposed no obligation on the State of employment to grant exemption from customs duty for professional tools.

280. Turning to subparagraph 2, the representative of the Philippines, while stating that there was no mention in the proposed article of tools or personal effects that migrant workers might acquire in a State of transit, suggested including a clause in the article as follows:

"The State of return may reserve the right to accord exemption from duties to migrant workers at the time of their return."

281. The representative of Yugoslavia proposed amending paragraph 2 to read:

"2. At the time of their final return to the State of origin or the State of normal residence, migrant workers and members of their families shall, subject to applicable regulations, enjoy the same exemption as set forth in paragraph 1."

282. The representative of France, while explaining the difficulty of his delegation with paragraph 2, stated that the proposal might be acceptable to his delegation but with some further revision.

283. The representative of Greece proposed revising paragraph 2 to read:

"No less favourable exemption than the above shall be accorded to migrant workers and members of their families by the State of origin or the State of normal residence."

284. The representative of the United States, while stating that his delegation was not aware of a specific definition in the draft convention of the State of normal residence, said that his delegation could accept the proposal made by Yugoslavia but suggested that a clearer way of formulating this provision might be:

"2. At the time of their final return to the State of origin, migrant workers and members of their families shall, subject to the applicable laws and regulations of that State, ..."

285. The representative of Pakistan proposed rewording paragraph 2 as follows:

"2. At the time of their final return to the State of origin, migrant workers and members of their families shall enjoy the same exemption from customs duties as provided in paragraph 1."

286. In an attempt to accommodate the diverging points of view, the representative of Italy suggested incorporating the elements of "final return to the State of origin or State residence" in paragraph 1 in order to meet the concern of some delegations.

287. In supporting that suggestion, the Chairman read out the proposal as combined in a single paragraph as follows:

"1. At the time of their initial admission to the territory of the State of employment and at the time of their final return to the State of origin or State of residence, migrant workers and members of their families shall, subject to the applicable laws and regulations of the State concerned as well as relevant international agreements and the obligations of States concerned arising out of their participation in custom unions, enjoy exemption from import duties and taxes, in respect of their personal household effects, as well as the equipment necessary to engage in their remunerated activities for which they are admitted in the States of employment."

288. The representative of Greece stated that his delegation would have difficulty in that case with the word "remunerated activity" because migrant workers upon their final return might not be performing any activity at all.

289. The representative of Italy suggested inserting the word "export" after the words "or import" because in many countries the question of "export duties" was a very important issue. The representatives of Algeria and Morocco voiced their

concern about that suggestion. They stressed that, since paragraph 2 addressed migrant workers in the State of origin or the State of normal residence, there was no need to include the concept of "export".

290. The representative of Greece, supported by the representative of Egypt, suggested revising paragraph 2 further to read:

"2. The same exemption and under similar conditions shall be accorded to migrant workers and members of their families at the time of their final return ..."

291. The representative of Tunisia proposed a revised reading:

"At the time of their final return migrant workers and members of their families shall be entitled to repatriate their personal and household effects, together with any other property acquired during their stay in the State of employment, exempt from tax of any kind."

292. At the end of the meeting and after a lengthy discussion, the Chairman suggested suspending consideration of the article and holding informal consultations with a view to facilitating the consensus.

293. At its 12th meeting on 29 September, the Chairman read out a text for paragraph 2 of article 46 which had emerged as a result of informal consultations, as follows:

"This provision applies mutatis mutandis in the State of origin or the State of normal residence to migrant workers and members of their families at the time of their final return thereto."

294. The Chairman suggested that that text could either be added as a second sentence to paragraph 1 or become a new paragraph 2.

295. The representative of Australia, supported by the representative of Norway, proposed rewording the text as follows:

"This provision applies mutatis mutandis to migrant workers and members of their families at the time of their final return to their State of origin or their State of normal residence."

296. In an effort to combine a number of different views, the Chairman suggested rewording the text he had proposed as follows:

"The provision in paragraph 1 above applies mutatis mutandis to migrant workers and members of their families in their State of origin or the State of normal residence at the time of their departure or their time of return."

297. Several delegations drew the attention of the Working Group to the fact that certain countries imposed an export tax and that migrant workers should be exempt from such a tax. That idea, they said, was missing from the text which had emerged after the first reading.

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298. The representative of the United States proposed the following text:

"Migrant workers and members of their families shall, subject to the applicable laws and regulations of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

"(a) Upon departure from the State of origin or the State of normal residence;

"(b) Upon initial admission to the State of employment;

"(c) Upon final departure from the State of employment;

"(d) Upon final return to the State of origin or the State of normal residence."

299. The representatives of Yugoslavia and Greece stressed that the end of the proposal by the United States in the introductory phrase reading "the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment" did not correspond with the subparagraph which referred to the final return of migrant workers and members of their families to the State of origin. They suggested that the Working Group adopt the proposal which had been agreed upon in informal consultations with the amendment made by the representative of France. However, in a spirit of compromise, their delegations would not block the consensus.

300. The delegation of Tunisia stated that it interpreted the provisions of article 46 (old article 47) as necessarily entailing recognition of the right of migrant workers to repatriate, exempt from taxes of any kind, all property acquired by them during their stay in the State of employment.

301. At its 12th meeting on 29 September, the Working Group adopted article 46 on second reading as follows:

Article 46

Migrant workers and members of their families shall, subject to the applicable laws and regulations of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

(a) Upon departure from the State of origin or State of normal residence;

(b) Upon initial admission to the State of employment;

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(c) Upon final departure from the State of employment;

(d) Upon final return to the State of origin or State of normal residence.

Article 47

302. The Working Group at its 12th and 13th meetings, on 29 and 30 September, considered article 47 on the basis of article 48 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"[The States parties to the present Convention shall, as far as possible and in accordance with the arrangements laid down in their legislation and applicable agreements, authorize and provide facilities for the transfer to the country of origin or the country of normal residence of migrant workers and members of their families of such parts of their earnings and savings as they may wish to transfer. The transfer of sums required for the maintenance of members of the migrant worker's family shall on no account be prevented or restricted.]"

"[Migrant workers shall have the right subject to applicable currency laws and regulations, to transfer their earnings and savings from the State of employment to other States, in particular those funds necessary for the support of their families, and States of employment shall take appropriate measures to facilitate such transfers in accordance with procedures established by law.]"

303. At the 12th meeting, on 29 September, the representative of the Netherlands recalled a proposal made by the Chairman in 1983 and said that that proposal would be more favourable to the migrant worker. He would prefer a similar formulation, in particular the deletion from the text of the right-hand column of the phrase "subject to applicable currency laws and regulations". The representative of Morocco also expressed preference for that proposal amended to include, after the word "transfer", the phrase "to the State of origin or normal residence".

304. Preference for the text in the right-hand column was expressed by the representatives of the Federal Republic of Germany, Egypt and Italy. The representative of Egypt also wished the last sentence of the left-hand column to be added to that text.

305. At the 12th meeting, on 29 September, the representative of Italy suggested that the phrase in the right-hand column "subject to applicable currency laws and regulations" be replaced by the phrase "in accordance with procedures established by law". The representative of Spain supported his suggestion.

306. The representative of Australia noted that while his country currently did not maintain any exchange control restrictions or requirements that would prevent migrant workers or others from remitting funds from Australia, his Government would not be able to accept a provision which would, for the future, exclude certain categories of persons, entities or transactions from the realm of any Australian

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exchange control laws or regulations. This view was also shared by the representative of the United States.

307. Several delegations stressed that migrant workers should in no way be prevented from sending earnings and savings to their State of origin or normal residence to support their families; that right should be beyond any currency regulations. Besides, article 32 of the draft Convention, already adopted, placed no restrictions on the transfer of assets at the point of final departure from the State of employment. The Convention should maintain its internal consistency by providing for no restrictions either on the transfer of assets during the migrant worker's stay in the State of employment.

308. The representative of Ghana, supported by the delegations of Burundi and China, drew the Working Group's attention to the fact that national circumstances were such that it was necessary to subject the exercise of the right of transfer to applicable national legislation.

309. The representative of Sweden underlined the importance of the difference between the right to transfer and the procedures established for transfer.

310. At the same meeting, the representative of Italy amended his earlier suggestion to read "according to the arrangements laid down in the applicable legislation and international agreements" in line with the corresponding provisions of the European Convention on the Legal Status of Migrant Workers. Several delegations expressed preference for the use of the word "procedures" or "modalities".

311. The representative of Greece proposed to amend the phrase put forward by the representative of Italy by adding, after the phrase "to transfer their earnings and savings from the State of employment", the words "to their State of origin or State of normal residence". He said, however, that he could also accept the formulation "State of origin or other States". Agreeing with the Greek proposal, the representative of Tunisia said that transfer of assets should be to the State of origin or that of normal residence. The representatives of Egypt, Ghana and Italy supported the view that such transfer should also be possible to other States.

312. The representative of the USSR stated that, in order to make clear that the transfer of earnings and savings was a guaranteed right subject only to certain procedures, the phrase "in accordance with ..." should be placed after the word "transfer". This idea met the approval of other delegations.

313. The representative of Australia, supported by the representative of the United States, wished to add to article 47 a phrase providing that migrant workers should also be able to transfer assets to the State of employment.

314. The Chairman suggested that the last phrase "in accordance with procedures established by law" could be deleted and, in an effort to reach consensus, at the 12th meeting, on 29 September, he put before the Working Group the following text:

"Migrant workers shall have the right to transfer, in accordance with the modalities and procedures in the State of employment, their earnings and savings from that State to their State of origin or any other State, in particular those funds necessary for the support of their families, and the State of employment shall take appropriate measures to facilitate such transfers in accordance with procedures established by law."

315. The representative of Algeria suggested ending the article with the word "family" and deleting the words ", in particular those funds necessary".

316. The representative of Morocco proposed dividing the paragraph into two sentences: the first setting forth the right of the migrant worker to make transfers and the second spelling out the procedures for such transfers.

317. The representative of Yugoslavia then put forward the following text:

"Migrant workers shall have the right to transfer their earnings and savings from the State of employment to the State of origin or to other States. States of employment shall, in accordance with procedures established by law, take appropriate measures to facilitate such transfers, in particular those funds necessary for the support of the families of migrant workers."

318. The representative of Greece suggested the following reformulation:

"Migrant workers shall have the right to transfer, in accordance with the procedures laid down in the applicable legislation their earnings and savings from the State of employment to their State of origin or any other State, in particular those funds which are necessary for the support of their families. States of employment shall take appropriate measures to facilitate such transfers."

319. The Working Group, after consultations, reverted to article 47 at its 13th meeting, on 30 September. The Chairman read out the following text which had resulted from those consultations:

"1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

"2. States concerned shall take appropriate measures to facilitate such transfers."

320. The representative of France stated that his delegation had difficulties with the formulation read out by the Chairman because of several provisions in French legislation concerning the transfer of savings and also because of the weakness of the term "procedures" in taking into account the conditions stipulated by French legislation with regard to the transfer of earnings and savings.

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321. The Working Group adopted article 47 on second reading at its 13th meeting, on 30 September, as follows:

Article 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

Article 48

322. At its 13th and 14th meetings on 30 September, the Working Group considered article 48 on the basis of article 49 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"Subject to agreements on double taxation, migrant workers and members of their families shall not be liable to taxes, duties or charges of any description whatsoever higher or more onerous than those imposed on nationals in similar circumstances. [They shall be entitled, under conditions no less favourable than those applicable to nationals, to deductions or exemptions from taxes or charges and to all allowances, including allowances for dependants.]"

323. The representative of the Federal Republic of Germany, referring to the first sentence, said that he could accept it with the deletion of the word "duties". As to the second sentence, he would prefer its deletion but, if that were not accepted, he wished to add the words "in similar circumstances" after the word "nationals".

324. The representative of Greece proposed the following text for article 48 supported also by the delegations of Morocco, Algeria, Yugoslavia and India:

"1. Migrant workers and members of their families shall:

"(a) Not be liable to taxes, duties or charges of any description whatsoever higher or more onerous than those imposed on nationals in similar circumstances;

"(b) Be entitled to deductions or exemptions from taxes or charges and to all taxes and related allowances applicable to nationals.

"2. States Parties, where necessary, shall co-operate in the adoption of measures to avoid double taxation of the earnings and savings of migrant workers and members of their families."

325. The representative of Australia stated that given the policy of his Government of not entering into agreements on taxation incorporating clauses requiring non-discrimination between nationals and non-nationals, it would not be possible for his delegation to subscribe to article 48 as drafted. He requested that the reservation of his delegation be recorded in the report.

326. The representative of Italy pointed out that the first paragraph of the Greek proposal was the same in substance as the first sentence of article 48 as adopted at first reading. The second paragraph of the Greek proposal added a new element. The representatives of the Netherlands and Norway wanted the deletion from paragraph 1 (b) of the words "and related". The delegations of the United States, Egypt and Ghana stated that they had difficulties with paragraph 1 (b). The representative of Sweden stated that the reference to "allowances" in the text should be limited to tax allowances.

327. The representative of the Philippines said that his delegation would like to see the inclusion of an additional paragraph to read: "Nothing in this Convention shall be construed to deprive the State of origin from its inherent right to tax its citizens".

328. The representative of Norway stated that the following should be added to the text proposed by the representative of Greece:

"In the absence of a treaty to avoid double taxation, the State of origin or the State of permanent residence, as appropriate, shall give credit to all taxes paid in the State of employment".

329. The representative of Italy suggested that in the introductory phrase of paragraph 1, after the word "shall", the words "in the State of employment" be added. The representative of Yugoslavia suggested the addition in paragraph 1 (b) of the words "in similar circumstances".

330. The representative of the United States stated that there are some differences in United States domestic law between the tax treatment of United States citizens and resident aliens on the one hand, and non-resident aliens on the other. However, as no other delegations had similar difficulties, the United States delegation decided that it would not block consensus on this provision. It did so with the express understanding that non-resident aliens and United States citizens would never be "in similar circumstances".

331. At its 14th meeting on 30 September, the Working Group resumed consideration of article 48. The Chairman read out the text which had emerged from informal consultations as follows:

"1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

"(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

"(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families;

"2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families."

332. The representative of Egypt stated that his delegation wished to place on record its reservation with respect to the word "charges" in paragraph 1 (a) as it is in contradiction with the regulations applied in Egypt concerning the working permit for migrant workers.

333. During the discussion, the representative of the Federal Republic of Germany stated that his delegation had called for the deletion of the word "duties" in paragraph 1. However, in order not to block a consensus, his delegation requested that its position be reflected in the report. The representative of Sweden also supported the deletion of the word "duties" or an explanation of what the word was meant to cover.

334. The representative of the Byelorussian Soviet Socialist Republic stated that his delegation could go along with the consensus despite the few remarks made by his delegation.

335. The representative of the Philippines expressed the concern and objection of his delegation on the formulation of subparagraph (a) of paragraph 1 of article 48. Referring to his earlier comments he stated that the new formulation did not reflect the admitted intent of the Group that the taxes, duties and charges referred to those imposed by the State of employment, and the addition in the heading of the phrase "in the State of employment", even with a comma after the word "earnings", merely emphasized that the added phrase "in the State of employment", referred to earnings and merely indicated the place of earnings and did not clearly refer to taxes, duties and charges. In his view, that formulation allowed an interpretation which would deprive the State of origin of its inherent right to tax its own citizens. In agreeing not to block a consensus, the representative of the Philippines stated that he could not understand why an amendment which would clearly reflect the admitted intention that the taxes, duties and charges referred only to those imposed by the State of employment could not be adopted.

336. The text of article 48 was adopted on second reading, as follows:

Article 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

(a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;

(b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

Article 49

337. At its 13th and 14th meetings, on 30 September, the Working Group considered article 49 on the basis of article 50 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in employment [or other economic activity]. [This provision does not apply to frontier workers.]

"2. [In States of employment where migrant workers are free to choose any type of employment for any employer] without prejudice to article 37 of the present Convention, migrant workers shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the loss of employment [or the termination of their economic activity] prior to the expiry of their working permits or similar authorizations.

["3. In order to allow migrant workers referred to in paragraph 2 above sufficient time to find alternative employment, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits.]"

338. The Working Group considered paragraph 1 at its 13th meeting, on 30 September. The representative of Italy suggested the deletion of both phrases in square brackets and the replacement of the word "employment" by the words "remunerated activity".

339. The representative of the Federal Republic of Germany expressed preference for the deletion of paragraph 1, but pointed out that, in a spirit of co-operation, he would not block consensus if the Working Group wished to keep it. In the latter case, he would also suggest the addition between the words "shall issue" of the words "endeavour to".

340. At the same meeting, the Working Group adopted paragraph 1 of article 49, as amended by Italy, as follows:

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1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

341. Turning to paragraph 2 of article 49, the representative of Italy, at the 13th meeting, on 30 September, suggested the replacement of the word "employment" by the words "remunerated activity", the retention of the phrase in the first set of brackets, the deletion of the words in the second set of brackets and the deletion of the reference to article 37.

342. The representative of the Federal Republic of Germany drew attention to a discrepancy between the English and French texts and pointed out that the French text should be aligned to the English text. He suggested the deletion of the phrase in the first set of brackets and also of the phrase "nor shall they lose their authorization of residence", indicating that he would not oppose the consensus if his position were reflected in the report. The representative of Italy expressed his disagreement with the latter suggestions.

343. The representative of the Netherlands said that the point in paragraph 2 was involuntary loss of employment as opposed to resignation. He suggested that the words "involuntary loss" or a similar expression could be added to the text. The representative of the USSR said that the inclusion of the phrase "for reasons beyond their control" could perhaps cover the concern of the Dutch delegation.

344. The representative of Australia made the following suggestions: (a) to reword the first phrase of paragraph 2 to read "[i]n States of employment where migrant workers enjoy freedom of choice for employment"; (b) to add, after the word "residence", the phrase "and thereby be regarded as in irregular situation"; and (c) to add at the end of paragraph 2 the phrase "unless such employment constituted a condition for the original authorization".

345. The representatives of the United States and Venezuela supported the position of the delegation of Australia.

346. At its 14th meeting, the Chairma. read out the text for paragraphs 2 and 3 of article 49 which had emerged from informal consultation and which, after revisions by the Chairman and the representative of the United States, read as follows:

"2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the termination of their remunerated activity prior to the expiration of their working permits or similar authorizations.

"3. In order to allow migrant workers, referred to in paragraph 2 above, sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits."

347. The Working Group adopted paragraphs 2 and 3 of article 49 as revised.

348. The representative of Sweden stated that, in the opinion of his delegation, the time-period referred to in paragraph 3 should be expressed as in article 9, paragraph 4, of the European Convention on the Legal Status of Migrant Workers.

349. In supporting the statement made by the representative of Sweden, the representative of Norway also stressed that the said period should not exceed the duration of the working permit.

350. The text of article 49 was adopted by the Working Group on second reading, as follows:

Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the termination of their remunerated activity prior to the expiration of their working permits or similar authorizations.

3. In order to allow migrant workers, referred to in paragraph 2 above, sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits.

Article 50

351. At its 14th meeting, on 30 September, the Working Group considered a text for article 50 on the basis of article 51 of the first reading contained in document A/C.3/39/WG.1/WP.1, as follows:

"[1. Without prejudice to article 37 of the present Convention, loss of employment shall not in itself imply the withdrawal of the authorization to work.

"[1. In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer, loss of employment shall not in itself imply the withdrawal of the authorization to work without prejudice to article 37 of the present Convention.]

"2. Migrant workers shall accordingly enjoy equality of treatment with nationals, particularly in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining during the remaining period of their authorization to work.]"

352. Several delegations questioned the need to retain the article in the Convention as the preceding article 49 stated that the loss of employment would not mean the cancellation of the authorization of residence.

353. After some discussion it was decided to retain article 50 as article 49 referred primarily to the retention by the migrant workers of the authorization of residence in the event of loss of employment, while article 50 dealt with the retention by the migrant worker of his authorization to work in the case of loss of employment. It was then decided to work from the right-hand column of the text adopted on first reading.

354. Speaking on paragraph 1, the Chairman proposed changing the words "any type of employment for any employer" to "their remunerated activity" and eliminating the words "to work without prejudice to article 37 of the present Convention".

355. The representative of the Federal Republic of Germany supported the proposal for that paragraph while suggesting the elimination of paragraph 2 in its entirety.

356. The Chairman then proposed revising paragraph 1 to read as follows:

"1. Migrant workers in the State of employment who are admitted for an indefinite period of time and who are allowed freely to choose their remunerated activity, shall not lose their authorization to work by the mere fact of the termination of their remunerated activity."

357. The representatives of the Netherlands, Norway and Australia supported the new formulation proposed by the Chairman.

358. The representative of France, supported by the representatives of Italy and Greece, stated that his delegation would have difficulty with the text as proposed by the Chairman because in France migrant workers were always admitted for a definite period of time. If the article was adopted with this wording, it would therefore have no applicability in France.

359. The representative of Pakistan stated that the words "for an indefinite period of time" should be deleted because if they were retained they would create difficulties for the migrant workers in the State of employment.

360. The representative of Italy recalled that in article 49, paragraph 2, there was no mention of migrant workers admitted for an indefinite period of time, but only to migrant workers who in the State of employment were allowed freely to choose their remunerated activity. He therefore questioned the necessity of including the reference to admittance for an "indefinite period of time". He suggested that if the Working Group wished to retain this reference, the word "and" could be changed to "or" in order for the article in question to apply in States such as France, Italy and Greece.

361. The representative of the Netherlands stated that the reference to the residence permit was not essential for his delegation, since the article primarily dealt with work permits.

362. The representative of Australia expressed the preference of his delegation for the word "and" because if the word "or" was used this would apply to a certain category of workers in Australia known as "working holiday-makers" for whom the Australian Government did not guarantee the provisions contained in article 50.

363. During the course of the debate, a number of delegations were in favour of the word "or" while other delegations expressed their preference for retaining the word "and". The representative of Italy then proposed adding an additional sentence to paragraph 1 as follows:

"States may apply the provisions of these paragraphs in cases where applicable legislation does not provide for admission for an indefinite period of time but permits the renewal of the permit of residence."

364. After some discussion, the Chairman proposed revising the first part of the proposal of the representative of Italy from "States may apply ... legislation" to "This principle shall be applicable as well in those States which do not ..."

365. The representative of Italy then revised his proposal as follows:

"States whose legislation does not provide for admission for an indefinite period of time shall apply this provision."

366. The representative of Sweden expressed the view of his delegation that it was not necessary to retain paragraph 1 in this article. Furthermore, all the proposals seemed to be going around in circles. The representative of Morocco expressed the same point of view.

367. The representative of Italy made the following proposal:

"States whose legislation does not provide for admittance for an indefinite period of time shall apply the provisions of this paragraph whenever the migrant worker is in possession of a valid permit."

368. After some discussion and in an effort to reach a consensus, the Chairman proposed another text for paragraph 1 as follows:

"1. Migrant workers who are allowed freely to choose their remunerated activity shall not lose their authorization to work by the mere fact of the termination of their remunerated activity, provided that they are in possession of a valid residence permit."

369. The representative of the Netherlands stated that the text of the paragraph was now deprived of any practical meaning and could be considered as a vicious circle. Therefore, he supported the Swedish view that it was not necessary to retain it. If delegations thought it to be important, however, it might be

integrated in the second paragraph. The representative of Morocco supported that view.

370. After further discussion, the representative of Italy proposed adding a second sentence to paragraph 1 reading as follows:

"States of employment whose legislation does not provide for admission for an indefinite period of time shall apply the provisions of this paragraph whenever the migrant worker concerned is in possession of a valid work permit."

371. The representative of Yugoslavia stated that his delegation supported the Chairman's proposal but that it could also agree with the Italian proposal.

372. In the light of the discussion, the Chairman then put forth the following proposal:

"The mere fact of the termination of the remunerated activity of a migrant worker shall have no effect on his working permit as long as he is permitted freely to choose his remunerated activity and is in possession of a valid residence permit."

373. The representative of Algeria, while supporting the proposal of the Chairman, suggested replacing the part of the sentence "shall have no effect on his working permit" by "shall not result in the withdrawal of his working permit".

374. After a lengthy debate, some delegations supported the Chairman's text and others wished to eliminate paragraph 1, or article 50 entirely, because they considered that the provisions contained in article 50 were already covered by article 49, paragraph 2.

375. Due to a lack of time, the Working Group decided to postpone consideration of article 50 to its next session.

376. The representative of the Federal Republic of Germany stated that his delegation maintained its substantive reservations with respect to the need for the adoption of a convention on the protection of the rights of migrant workers, since, in its view, such protection was already amply afforded by the Universal Declaration of Human Rights and the International Covenants on Human Rights, which should not be diminished through the elevation of supplementary rights to the rank of human rights. As regards rights relating to employment, social security and the stay of migrant workers, the International Labour Organisation was the competent organization. Apart from such substantive reservations, his delegation had objections to a great many provisions adopted on second reading. The most important of those objections related to the fact that migrant workers in an irregular situation should become subjects of an international convention, that such a convention should accord them too many rights and that article 2, paragraph 2, included within the scope of the draft Convention categories of persons which, in his delegation's view, were not truly migrant workers. In the light of all those objections, it seemed highly unlikely that the Federal Republic of Germany would ratify the Convention. In that connection, his delegation wished

to thank the Chairman of the Working Group for having reaffirmed at the meeting on 10 June 1987 that the Convention would have legal force only for those States which became parties to it.

377. The Chairman declared that the statement by the representative of the Federal Republic of Germany which questioned the need for the Convention and cast doubts on the competence of the United Nations was completely irrelevant since its intention was to reopen various issues which had clearly been settled by the General Assembly in resolution 34/172 of 17 December 1979, adopted by an overwhelming majority, by which it had decided to undertake the drafting of an international convention on the protection of the rights of all migrant workers and their families. That decision had, moreover, been consistently reaffirmed by the General Assembly in seven resolutions, also adopted by an overwhelming majority if not without a vote, by which the mandate of the Working Group had been extended each year. The Chairman therefore stated that any discussion in the Working Group of the issues raised by the representative of the Federal Republic of Germany in his statement would be completely out of order.

378. At its 16th meeting, on 2 October 1987, the Working Group adopted the present report.

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

PART III

Fundamental human rights of all migrant workers and
members of their families

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party to the present Convention only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language which they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The person concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason against his expulsion and to have his case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion which has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his family who is subject to such a decision may seek entry into a State other than his State of origin.

8. In case of expulsion of a migrant worker or a member of his family the costs of expulsion shall not be borne by him. The person concerned may be required to pay his own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his family acquired in accordance with the law of that State including the right to receive wages and other entitlements due to him.

Article 27

1. With respect to social security, migrant workers and members of their families will enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a certain benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

Article 32

Upon the termination of their stay in the State of employment, all migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings.

Article 33

1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:

(a) Their rights arising out of the present Convention;

(b) The conditions of admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.

2. Each State Party to the present Convention shall take all measures it deems appropriate to disseminate the said information or to ensure that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, it shall co-operate with other States concerned.

3. The adequate information shall be provided upon request to migrant workers and members of their families, free of charge, and, as far as possible, in a language which they are able to understand.

PART IV

Other rights of migrant workers and members of their families
in a regular situation

Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in this part of the Convention in addition to those set forth in part III.

Article 37

Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements which they must satisfy in the State of employment and the authority to whom they must address themselves for any modification of those conditions.

Article 38

1. States of employment shall make every effort to authorize migrant workers and members of their families to be temporarily absent without effect upon their authorization to stay or to work, as the case may be. In doing so, States of employment shall take into account the special needs and obligations of migrant workers and members of their families, in particular in their States of origin.

2. Migrant workers and members of their families shall have the right to be fully informed of the terms on which such temporary absences are authorized.

Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.

2. The above-mentioned rights 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 the other rights recognized in the present Convention.

Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 41

1. In conformity with their national legislation migrant workers and members of their families shall have the right to participate in public affairs, to vote and to be elected at elections in their State of origin.

2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

Article 42

1. States Parties to the present Convention shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions.

2. States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.

3. Migrant workers may enjoy political rights in the State of employment only to the extent that that State, in the exercise of its sovereignty, grants them such rights.

Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment, in relation to:

- (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;
- (b) Access to vocational guidance and placement services;
- (c) Access to vocational training and retraining facilities and institutions;
- (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;
- (e) Access to social and health services, provided that the requirements for participation in schemes are met;

/...

(f) Access to co-operatives and self-managed enterprises without implying a change of their migration status and subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

2. States Parties to the present Convention shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the above-mentioned rights whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

Article 44

1. States Parties to the present Convention, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the family of the migrant worker.

2. States Parties to the present Convention shall take measures which they deem appropriate and which fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship which, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2, to other family members of migrant workers.

Article 45

1. Members of the family of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

/...

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

Article 46

Migrant workers and members of their families shall, subject to the applicable laws and regulations of the States concerned, as well as relevant international agreements and the obligations of the States concerned arising out of their participation in customs unions, enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment:

- (a) Upon departure from the State of origin or State of normal residence;
- (b) Upon initial admission to the State of employment;
- (c) Upon final departure from the State of employment;
- (d) Upon final return to the State of origin or State of normal residence.

Article 47

1. Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements.

2. States concerned shall take appropriate measures to facilitate such transfers.

Article 48

1. Without prejudice to applicable double taxation agreements, migrant workers and members of their families shall, in the matter of earnings in the State of employment:

- (a) Not be liable to taxes, duties or charges of any description higher or more onerous than those imposed on nationals in similar circumstances;
- (b) Be entitled to deductions or exemptions from taxes of any description and to any tax allowances applicable to nationals in similar circumstances, including tax allowances for dependent members of their families.

2. States Parties shall endeavour to adopt appropriate measures to avoid double taxation of the earnings and savings of migrant workers and members of their families.

Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the termination of their remunerated activity prior to the expiration of their working permits or similar authorizations.

3. In order to allow migrant workers, referred to in paragraph 2 above, sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn, at least for a period corresponding to that during which they may be entitled to unemployment benefits.
