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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 FamiliesChairman: 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 3 October 1986; (m) a sixth inter-sessional meeting, from 1 to 12 June 1987; (n) an eighth session during the

forty-second session of the General Assembly, from 22 September to 2 October 1987; (o) a seventh inter-sessional meeting, from 31 May to 10 June 1988; and a ninth session, during the forty-third session of the General Assembly, from 27 September to 7 October 1988.

3. By its resolution 42/140 of 7 December 1987, the General Assembly, *inter alia*, took note with satisfaction of the reports of the Working Group (A/C.3/42/1 and A/C.3/42/6) and, in particular, of the progress made by the 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 1988 of the Economic and Social Council. In paragraph 3 of the resolution, the Assembly invited the Secretary-General to transmit to Governments the reports of the Working Group so as to enable the members of the Group to continue the drafting, in second reading, of the draft Convention during the inter-sessional meeting to be held in the spring of 1988, as well as to transmit the results obtained at that meeting to the Assembly for consideration during its forty-third session. In paragraph 4 of the resolution, the Assembly also invited the Secretary-General to transmit those documents 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-third session of the Assembly, preferably at the beginning of the session, to continue the second reading of the draft International Convention and requested the Secretary-General to do everything possible to ensure adequate Secretariat services for the Working Group for the timely fulfilment of its mandate, both at its inter-sessional meeting after the first regular session of 1988 of the Economic and Social Council and during the forty-third session of the Assembly.

4. In pursuance of General Assembly resolution 42/140, the Working Group met at United Nations Headquarters from 27 September to 7 October 1988 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. Observers for the International Labour Organisation (ILO) and the World Health Organization (WHO) also attended the meetings.

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

(a) Report of the Working Group on its inter-sessional meeting in the spring of 1988 (A/C.3/43/1);

(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.I/WP.1);

(c) Text of the preamble and articles of the draft International Convention adopted on second reading by the Working Group (A/C.3/43/WG.I/WP.1/Rev.1);

(d) Proposals for part VII (formerly part VI) of the draft International Convention submitted by Mexico (A/C.3/43/WG.I/CRP.1/Rev.1);

(e) Letter dated 3 May 1988 submitted by the International Labour Office (A/C.3/43/WG.I/CRP.2);

(f) Working paper submitted by Finland, Greece, Italy, Morocco, Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia containing proposals for part VII of the draft International Convention "Application of the Convention" (A/C.3/43/WG.I/CRP.5);

(g) Working paper submitted by Finland, Greece, India, Italy, Norway, Portugal, Spain and Sweden containing a proposed text for article 62 ter (Self-employed migrant workers) (A/C.3/43/WG.I/CRP.6).

6. 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, A/C.3/41/3, A/C.3/42/1 and A/C.3/42/6);

(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.I/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.I/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.I/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.I/CRP.8);

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

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

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

(i) The observations of the International Labour Office on the text provisionally agreed upon during the first reading (A/C.3/40/WG.I/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.I/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.I/CRP.4);

(l) Working paper submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden concerning the definition of "migrant workers" contained in the revised proposal for part I, articles 2 and 4, and part IV (A/C.3/38/WG.I/CRP.5).

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

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

Article 62

8. The Working Group did not consider article 62 and decided to resume its consideration at its next session.

9. At its 14th meeting, on 5 October 1988, the attention of the Working Group was drawn to a proposed text for article 62 ter contained in document A/C.3/43/WG.I/CRP.6 submitted by the representatives of Finland, Greece, India, Italy, Norway, Portugal, Spain and Sweden. The proposed text reads as follows:

"Article 62 ter

"1. Self-employed migrant workers as defined in article 2 (2) shall be entitled to all the rights provided for in part IV of the Convention with the exception of such rights which are exclusively applicable to workers having a contract of employment.

"2. Without prejudice to articles 37 and 52 of the present Convention, the termination of the economic activity of the self-employed migrant workers shall not in itself imply the withdrawal of the authorization for them or for the members of their families to stay or to engage in a remunerated activity in the State of employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted.

"3. The self-employed migrant workers shall enjoy equality of treatment with self-employed nationals of the State of employment in respect of access to any public subsidies or other support measures relating to their activity."

PART VI

Promotion of sound, equitable and humane conditions in connection
with lawful international migration of workers and their families

Article 63

10. At its 1st and 3rd meetings, on 27 and 28 September 1988, the Working Group considered a text for article 63 as contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"PART VI

"Promotion of sound, equitable and humane conditions
in connection with lawful international migration of
workers and their families

"Article 63

"Without prejudice to the provisions of article 37 regarding the freedom of each State to determine the criteria for authorizing the admission, duration of stay, [type or choice of] employment [or other economic activity] of migrant workers and members of their families, the States of employment shall consult and co-operate with other States concerned with a view to promoting sound, equitable and humane conditions in connection with lawful international migration of workers and their families.

"[In this respect due regard should be paid not only to manpower needs and resources, but also the social, economic, cultural [and political] and other consequences for migrant workers involved in such migration, as well as for the community or States concerned.]"

11. During the consideration of this article, the Working Group had before it a new text for the title of part VI and article 63 submitted by the Mediterranean and Scandinavian (MESCA) group of countries, reading as follows:

"PART VI

"Promotion of sound, equitable and humane conditions
with respect to international migration of workers
and members of their families

"Article 63

"Without prejudice to the provisions of article () regarding the freedom of each State to determine the criteria for authorizing the admission, stay and remunerated activity of migrant workers and their families, the States concerned shall consult and co-operate with a view to promoting sound, equitable and humane conditions with respect to international migration of workers and the members of their families.

"In this respect, due regard shall be paid not only to manpower and resources, but also to the social, economic, cultural and other consequences for migrant workers and members of their families involved, as well as for the communities concerned."

12. The representative of France suggested that the title of part VI of the French text should be revised to read:

"Promotion de conditions dignes, équitables et humaines en ce qui concerne la migration internationale des travailleurs migrants et des membres de leurs familles"

13. With reference to the MESCA proposal the representative of the Federal Republic of Germany questioned the deletion of the reference to "lawful" international migration. He suggested that irregular migration could not be the subject of the sort of bilateral consultations between States envisaged by the article. He therefore proposed that "lawful" should be maintained. He further proposed that the words "if necessary" be put after "shall" in line 4 of paragraph 1. He also proposed that paragraph 2 be deleted and added that, in order not to stand in the way of a consensus, his delegation would be satisfied if its position was reflected in the report.

14. The Chairman pointed out that if "lawful" was retained in the title of part VI then it would not be necessary to have the word repeated in the main body of article 63. With regard to paragraph 2 he observed that in the English text it was not clear that States should consult among themselves. Also with regard to paragraph 2, he suggested that the Working Group should be cautious in deleting it as that paragraph sought to ensure that the question of migrant workers was not solely considered from the point of view of the supply and demand of manpower but that other relevant elements be taken into consideration.

15. The representative of the Netherlands supported the MESCA proposal to delete "lawful" and cited article 68, as adopted during the first reading, as a precedent for not limiting the scope of an article only to "lawful" migrants. He observed that consultations regarding irregular migrant workers were useful in ensuring their orderly return if their existence became known to a State of employment. He also suggested that co-operation and consultation between States were means of preventing the occurrence of the phenomenon in the first place.

16. The representative of Yugoslavia supported the MESCA proposal and the deletion of the word "lawful". She could not agree with the proposal of the Federal Republic of Germany to delete the second paragraph.

17. The representative of Morocco suggested that the MESCA proposal could be limited to legal migration only and that a third paragraph be added to it mentioning that the consultations mentioned should focus on measures to prevent and combat irregular migration and exploitation of labour through illicit and clandestine trafficking.

18. The representative of the United States of America shared the concern voiced by the representative of the Federal Republic of Germany regarding extending the scope of article 63 to cover irregular workers and therefore supported the idea that the article be restricted only to "lawful" migration. As an alternative he proposed that the words "as appropriate" be added to line 5 of paragraph 1 of the MESCA proposal after the word "co-operate". He also proposed that the word "parties" be inserted after the word "States" in line 4 of paragraph 1 of the MESCA proposal so that this provision would not be binding upon States not party to the Convention.

19. The representative of Greece indicated that he did not support the proposal of the representative of the Federal Republic of Germany which suggested that the words "if necessary" be added after the word "shall" to line 4, paragraph 1 of the MESCA proposal. He indicated that such an addition would raise complications such as the question of whose criteria would be used to judge necessity.

20. The representative of the Union of Soviet Socialist Republics also supported the deletion of the word "lawful" from the title of part VI, as in his view the elimination of irregular migration was one of the aims of the Convention. With reference to the proposal of the representative of Morocco he indicated that it merited consideration because it emphasized the aim of the Convention to combat irregular migration. He also stated that to the extent that article 63 as adopted on first reading contained a reference to the text of former article 37, whose text had now changed it would be necessary to change the text of the MESCA proposal for article 63 accordingly.

21. The representative of China proposed that the word "lawful" be deleted from article 63 because it was redundant. He also proposed the deletion of the word "international" from article 63 as, in his view, the word "migration" implied movement between countries anyway.

22. The representative of Italy stated that the general gist of article 63 was to ensure that migration be carried out in an orderly manner. He questioned whether this could be done outside of a legal framework and therefore proposed that article 63 be restricted to legal migration. With reference to the proposal by the representative of Morocco he suggested that the proposed third paragraph would not be necessary as article 67 was expressly concerned with combating illicit migration.

23. The representative of Morocco agreed with the representative of Italy in that although irregular migration should be eliminated, where article 63 spoke of "promotion" this could only refer to lawful migration as only lawful things may be promoted. With regard to paragraph 2, she indicated that the Convention should be concerned with the needs of migrant workers rather than consequences to the communities because she viewed the latter as essentially a concern of the States of employment. She proposed that the paragraph be changed to read as follows:

"In this respect, due regard shall be paid not only to manpower needs but also to the social, economic, and cultural needs of migrant workers and members of their families."

24. The Chairman observed that it was important to retain some reference to communities and indicated that this was not exclusively a concern of States of employment as the word also referred to the reintegration of returning migrant workers into communities of States of origin.

25. The representative of Canada suggested that the word "lawful" be inserted in line 5 of paragraph 1 after the word "humane". He also proposed the insertion of the words "and conditions" after the word "criteria" in line 2, paragraph 1 of the MESCA proposal. With regard to paragraph 2 he suggested that the word "manpower" be changed to "labour". However, he felt that the reference to "communities concerned" should be retained as it not only referred to States of employment but also encompassed such phenomena as the "brain drain" of States of origin.

26. The Chairman observed that apart from the problem of "brain drain", States of origin could also face such problems as the reintegration of returning migrant workers into their communities. The Chairman also observed that the word "consequences" was not necessarily pejorative but that it could have either good or bad connotations.

27. The representative of the Federal Republic of Germany explained that his proposal to insert "if necessary" in paragraph 1 was to avoid States being obliged to consult on the issue of manpower migration. He also indicated that it was by definition impossible to negotiate on irregular migration and therefore took the view that article 63 should basically refer to lawful migration, but that a sentence could be added indicating that the consultations should take into account measures to combat irregular migration. He suggested that the addition of a paragraph for that purpose, as proposed by the representative of Morocco, was unnecessary. Regarding paragraph 2 he suggested that it be deleted as the elements enunciated in it did not need to be quite so explicitly stated.

28. The representative of France stated that paragraph 2 meant that in States of employment the treatment of migrant workers should not only be considered in the light of the State's employment needs but also in terms of some of the migrant workers' needs. He further proposed that the word "considerations" be used instead of "consequences".

29. The representative of the USSR said that he did not support the proposal made by the representative of Canada to include the words "and conditions" to paragraph 1 as these words could not be found in the text of old article 37 as adopted during the second reading. He added that paragraph 2 was useful but that he did not support the MESCA proposal to delete "or States" from the last line of that paragraph, as adopted during the first reading, because the consequences referred to therein could affect States of employment and they should be aware of that fact.

30. After some discussion the Working Group decided to take up article 63 in informal consultations.

31. At its 3rd meeting, on 28 September 1988, the Working Group resumed consideration of article 63. The Chairman announced that in the light of informal consultations the following text appeared to have the Working Group's consensus:

"1. Without prejudice to article ___ the States parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions with respect to international migration of migrant workers and members of their families.

"2. In this respect due regard shall be paid to labour needs and resources, but also to the social, economic and cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned."

32. The representative of the Federal Republic of Germany stated that the first paragraph as read out by the Chairman broadly covered the concerns he had expressed earlier. This was not the case with paragraph 2, which he would have preferred to see deleted. However, he would not break the consensus of the Working Group if the paragraph had the agreement of all other delegations.

33. The representative of the United States said that his delegation could accept the text of article 63 as read out by the Chairman. However, because article 63 referred to the article which, in the first reading, had been numbered article 37, his delegation felt that it was appropriate to reiterate its understanding of the latter article. His delegation interpreted former article 37 to reaffirm the well recognized principle that all States have the sovereign right to adopt and enforce their own immigration policies. In this regard, his delegation understood the word "admission" in former article 37 in its broadest sense, to encompass all terms and conditions pursuant to which migrant workers and members of their families may enter and remain in the United States, as well as those conditions that would result in their expulsion.

34. With regard to paragraph 2, the representative of the USSR stated that the process of migration had consequences not only for local communities but also for States as a whole. He therefore suggested that the paragraph should not only refer to communities but to States as well. His delegation, however, would not prevent consensus if there was no general agreement on his point within the Working Group.

35. At its 3rd meeting, on 28 September 1988, the Working Group adopted article 63 as read out by the Chairman.

36. After the adoption of article 63, the representative of France stated that his delegation could not accept the fact that paragraph 1 did not refer to the promotion of conditions favouring lawful migration. It was all the more unacceptable since the heading of part VI also did not mention the promotion of lawful migration or the efforts to combat unlawful migration. This position of his delegation should be reflected in the report, and his delegation reserved the right to request once again, when article 67 was considered, that a reference to lawful migration be included in the heading of part VI of the Convention.

37. The representative of India shared the views of the representative of France.

38. The text of article 63, as adopted on second reading, reads as follows:

Article 63

1. Without prejudice to article _____ the States parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions with respect to international migration of migrant workers and members of their families.

2. In this respect due regard shall be paid not only to labour needs and resources, but also to the social, economic and cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

Article 64

39. At its 1st and 5th meetings, on 27 and 29 September 1988, the Working Group considered a text for article 64 as contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. The States Parties to the present Convention shall maintain appropriate government [agencies] [institutions] [entities] [and promote other services] to deal with questions concerning international migration of workers and their families. Their functions [shall] [should] include, *inter alia*:

"(a) The formulation of policies regarding such migration;

"(b) Exchange of information, consultation and co-operation with the competent authorities of other States involved in such migration;

"(c) [The provision of information, [particularly] to employers and their organizations as well as [to workers and] worker's organizations] on policies, laws and regulations relating to migration and employment, on agreements concluded with other States on migration for employment and other relevant topics and on conditions of work and life of migrant workers and members of their families in the States of employment;]

"(d) The provision of information and assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, employment [and other economic activities], exit and return to the State of return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations;

"[(e) Other measures which are necessary to facilitate the implementation of the present Convention.]

"[(e) The recommending of legislation regulations and other measures which are necessary to facilitate the implementation of the present Convention and to deal with matters relating to international migration and migrant workers.]

"[2. The States Parties to the present Convention shall co-operate in the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families.]"

40. During the consideration of this article, the Working Group had before it a new text for article 64 submitted by the Mediterranean and Scandinavian group of countries, reading as follows:

"Article 64

"1. The States Parties to the present Convention shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

"(a) The formulation and implementation of policies regarding such migration;

"(b) Exchange of information, consultation and co-operation with the competent authorities of other States involved in such migration;

"(c) The provision of appropriate information, particularly to workers and their organizations, inter alia, on policies, laws and regulations relating to migration and employment, on agreements concluded with other States on migration and other relevant topics and on conditions of work and life of migrant workers and members of their families in the States of employment;

"(d) The provision of information and assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

"2. The States Parties to the present Convention shall co-operate in the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families."

41. The representative of the Federal Republic of Germany proposed, that subparagraphs (a) to (d) of paragraph 1 of the MESCA proposal be deleted and that the idea contained in subparagraph (e) of paragraph 1 of the text, as adopted during the first reading, be taken into account and be merged with the introductory phrase of paragraph 1 in one single paragraph. With regard to paragraph 2 he proposed that it be deleted.

42. The representative of the Netherlands suggested that subparagraphs (c) and (d) of paragraph 1, in referring to the rights of workers, should have been contained in parts III and IV of the Convention. He also suggested that in emphasizing that

information be provided by States of employment, subparagraph (c) created some confusion because article 33, as adopted during the second reading, already contained a right to information for migrant workers and members of their families.

43. With reference to subparagraph (c) of paragraph 1 of the MESCA proposal, the Chairman observed that the issues should be viewed from all angles and therefore the words "States of origin" could be incorporated into the subparagraph.

44. The representative of Yugoslavia, while supporting the MESCA proposal, proposed that the word "bodies" be used instead of the word "services" in the introductory phrase to paragraph 1. She advocated the retention of the left-hand column of subparagraph (e) of paragraph 1 as adopted during the first reading. She disagreed with the representative of the Federal Republic of Germany's proposal to delete paragraph 2 because experience had confirmed the importance of adequate consular services to migrant workers.

45. The representative of the Federal Republic of Germany referred to his proposal and indicated that the one paragraph he proposed was more flexible than the MESCA proposal and therefore easier to implement.

46. The representative of France supported the proposal of the representative of the Federal Republic of Germany to have just one paragraph and noted that this proposal had also received some support from the representative of the Netherlands. The representative of France also questioned whether the Convention would benefit from having so many details contained in it.

47. At its 5th meeting, on 29 September 1988, the Working Group resumed consideration of a text for article 64. The Chairman read out a text for this article which had emerged as a result of informal consultations, reading as follows:

"Article 64

"1. The States Parties to the present Convention shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

"(a) The formulation and implementation of policies regarding such migration;

"(b) Exchange of information, consultation and co-operation with the competent authorities of other States involved in such migration;

"(c) The provision of appropriate information, particularly to employed workers and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant topics;

"(d) The provision of information and appropriate assistance to migrant.

workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations.

"2. The States Parties to the present Convention shall facilitate as appropriate the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families."

48. The representative of the Federal Republic of Germany reiterated his suggestion that article 64 be reformulated into one single paragraph. However, in order not to block a consensus he indicated that he would be satisfied to have this proposal reflected in the report. The proposal read as follows:

"In order to facilitate the implementation of the present Convention, States Parties shall maintain, as far as possible and within the context of available resources, appropriate services to deal with questions concerning international migration of workers and members of their families."

49. The representative of Finland proposed that the word "Parties" be inserted after the word "States" in line 2 of subparagraph (b) of paragraph 1.

50. The representative of the United States proposed that a comma be put after the word "workers" on line 2 of subparagraph (c) of paragraph 1. He also proposed that the word "topics" on line 5 of the same subparagraph be changed to "matters". He stated that his delegation could join consensus on this article and requested that the record reflect his delegation's understanding that the provisions of paragraph 1 (d) refer to the normal welfare and protection function of consular services for their citizens abroad. Similarly, his delegation interpreted paragraph 2 as regards consular services as codifying existing international law regarding representation by consular offices on behalf of their citizens in another country.

51. At the same meeting, the Working Group adopted article 64 on second reading, as follows:

Article 64

1. The States Parties to the present Convention shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

(a) The formulation and implementation of policies regarding such migration;

(b) Exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

(c) The provision of appropriate information, particularly to employers, workers, and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations;

2. The States Parties to the present Convention shall facilitate as appropriate the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families.

Article 65

52. At its 1st, 2nd, 5th and 9th meetings, between 27 September and 3 October 1988, the Working Group considered a text for article 65 on the basis of article 65 contained in document A/C.3/39/WG.I/WP.1, which read as follows:

"[The recruitment [or placement] of workers for employment in another State may be carried out [in conformity with] [subject to] national laws and regulations and in accordance with applicable international agreements [solely] by:

"(a) Governmental bodies of the State in which such recruitment takes place;

"[(b) Governmental bodies of the State;

"(c) A body established by virtue of a bilateral or multilateral agreement;

"(d) A prospective employer or a person in his/her service, or private agencies, provided that [any required] approval and supervision for such operations is [solely] granted by the appropriate competent authorities of the State concerned.]"

"[(1) Subject to the following paragraph the right to undertake operations with a view to the recruitment [or placing] of workers in employment in another country shall be restricted to:

"(a) Public services or bodies of the country in which such operations take place;

"(b) Public services or bodies of the receiving country, if authorized by agreement between the States concerned;

"(c) A body established by virtue of a bilateral or multilateral agreement.

"(2) National laws and regulations and bilateral or multilateral agreements may also permit the said operations to be undertaken, subject to the approval and supervision of the authorities of the country concerned, by

"(a) The prospective employer or a person in his service acting on his behalf;

"(b) Private agencies.]"

53. The Working Group also had before it a revised proposal for article 65 submitted by the Mediterranean and Scandinavian group of countries, which read as follows:

"1. Subject to the following paragraph, the right to undertake operations with a view to the recruitment of workers in employment in another country shall be restricted to:

"(a) Public services or bodies of the country in which such operations take place;

"(b) Public services or bodies of the receiving country on the basis of agreement between the States concerned;

"(c) A body established by virtue of a bilateral or multilateral agreement.

"2. National laws and regulations of the States concerned and bilateral or multilateral agreements may also permit the said operations to be undertaken, subject to the approval and supervision of the authorities of the country concerned, by:

"(a) The prospective employer or a person in his service acting on his behalf;

"(b) Private agencies."

54. Referring to the revised proposal, the representative of India requested the sponsors of the new proposal to clarify what they meant by private agencies.

55. In response to the request, the representative of Finland stated that the sponsors of the proposal had in mind, e.g., private labour exchange agencies which have been granted authorization to engage in recruitment operations under the supervision of the manpower authorities.

56. The representative of the United States, while voicing some reservations over the revised proposal submitted by the Mediterranean and Scandinavian group of countries, stated that States had the right to regulate recruitment within their territory. However, he noted that paragraph 2 of article 65 seemed to create the presumption that unless a State specifically permitted private recruitment, such recruitment was illegal. In his delegation's view, the presumption should be reversed, namely, unless specifically prohibited, private recruitment was permitted. In that regard, he explained that the United States Government did not participate in the recruitment of foreign workers by United States employers or of

United States workers by foreign employers. He expressed his preference for a more general version of the article, modelled on the chapeau of the left-hand column of article 65 as contained in document A/C.3/39/WG.I/WP.1 (see para. 52 above). He felt that such a general formulation would recognize the right of States to regulate recruitment, while leaving it to the States to decide just how to regulate it.

57. The representative of Italy stressed that the purpose of the whole of part VI of the draft Convention was not only designed to provide for recruitment in an orderly manner but was also to prevent migration under abusive conditions and to combat the illicit and clandestine trafficking of labour.

58. During the discussion, various delegations pointed to the illegal activities of some enterprises that were still exploiting migrant workers in Asia, Africa and Latin America. A number of delegations emphasized the need to subject recruitment to some form of regulation and to have a clause in that part of the Convention for controlling and penalizing the activities of clandestine enterprises.

59. The representative of Morocco stated that article 65 did not raise major problems for her delegation because in order to prevent illegal migration the Moroccan Government required Moroccan workers to possess work contracts before migration. However, as regards paragraph 1 (a) of the revised proposal, she felt that the provision of the subparagraph should be formulated so that it would not authorize any private services or bodies to recruit migrant workers and turn them into mercenaries. Consequently she proposed adding in the subparagraph, "States of origin or States of employment as the case may be".

60. The representative of Algeria pointed out that the activities of such bodies should be subject to authorization and supervision by the public authorities of the State concerned and should conform to the laws and regulations of the States in which such recruitment took place. The representative of Egypt shared this view.

61. In the course of the debate, the representative of the Federal Republic of Germany introduced a proposal for a new article 65 bis, which read as follows:

"States of origin shall take every appropriate measure, if necessary in co-operation with States of employment, to ensure that migrant workers and members of their families are in possession of the papers and documents required for their stay in the State of employment, travel through a State of transit and return to the State of origin, and that they obtain the renewal of such papers and documents without undue delay or hindrance."

62. The representative of France said that there was a need to clarify whether the proposal for article 65 bis would concern migrant workers in a regular situation or those in an irregular situation.

63. The representatives of Algeria, India and Yugoslavia expressed their objection at having such a clause in the Convention. The representative of Finland, voicing the difficulty of his delegation in accepting such a proposal, observed that the proposal raised more problems than it solved. He also referred to article 21 of

the Convention, which in his opinion already resolved the issue. The representative of the Byelorussian Soviet Socialist Republic noted that, in his view, the proposal was an abbreviation of paragraph 1 of article 66 and might open the door for massive expulsions. The representative of Morocco stated that while she could understand the concern of the representative of the Federal Republic of Germany, his proposal might still have serious repercussions for migrant workers because it did not specify that delays in renewals might affect the authorizations of residence or employment of the person concerned.

64. In the light of those reactions by other delegations, the representative of the Federal Republic of Germany said that, although his delegation insisted on its proposal to include article 65 bis in the Convention, it would be satisfied in order not to obstruct a consensus if its proposal was included in the report.

65. After some discussion, the Working Group decided to take up article 65 in informal consultations.

66. At its 5th meeting, on 28 September 1988, the Working Group continued consideration of article 65 on the basis of a revised text submitted by the Mediterranean and Scandinavian group of countries. In paragraph 1 (b) of the group's text, the words "receiving country" were replaced by the words "State of employment" and paragraph 2 was revised to read as follows:

"2. National laws and regulations of the States concerned and bilateral or multilateral agreements may also permit the said operations to be undertaken, subject to any approval and supervision by the public authorities as foreseen in the laws and regulations of the State concerned, by agencies or the prospective employer or persons acting on his behalf. States Parties concerned shall ensure that all relevant rights and obligations established in the present Convention are respected."

67. The representative of Australia, referring to subparagraph (b) of paragraph 1, stated that his delegation could only accept paragraph 1 by interpreting the words "on the basis of agreement" to mean the normal consents implicit in the operations of a foreign mission and not as a requirement to conclude specific explicit agreements. The representative of Canada shared that point of view. The Chairman confirmed the interpretation given by Australia.

68. The representative of Finland pointed out that in the introductory phrase of paragraph 1 and in subparagraph (a) the word "country" should be replaced by "State".

69. At the same meeting, the Working Group adopted paragraph 1 of article 65, as amended by Finland, as follows:

"1. Subject to the following paragraph, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

"(a) Public services or bodies of the State in which such operations take place;

"(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

"(c) A body established by virtue of a bilateral or multilateral agreement."

70. Referring to paragraph 2 of article 65, the representative of India noted that reference should not be merely made to "States" but to "States Parties".

71. The representative of the United States recalled that he had suggested that the first sentence of paragraph 2 should be formulated as follows:

"The said operations may be undertaken, subject to any approval and supervision by public authorities as foreseen in the laws and regulations of the States concerned, by agencies or the prospective employer or persons acting on their behalf."

Explaining his proposal, the representative of the United States said that its purpose was to cover situations where a State chooses not to regulate certain situations. The representative of Australia agreed with the formulation suggested by the United States.

72. After a brief discussion on paragraph 2 of article 65, the Working Group decided to hold informal consultations on the paragraph and to reconsider it at a later meeting.

73. At its 9th meeting, on 3 October 1988, the Working Group resumed consideration of article 65.

74. The Chairman read the text of article 65 as it had emerged from the informal consultations, as follows:

"1. Subject to the following paragraph, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

"(a) Public services or bodies of the State in which such operations take place;

"(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

"(c) A body established by virtue of a bilateral or multilateral agreement.

"2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to national laws, regulations and practices of those States, agencies of prospective employers or persons acting on their behalf may also be permitted to undertake the said operations."

75. The representative of Finland stated that his delegation could accept the text of article 65 as it emerged from the informal consultations. However, he stated that his delegation felt that the supervision should be based on established laws and regulations and not on practices that were unclear in the provision.

76. The representative of France also placed on record his reservations about the word "practices".

77. The representative of Canada, supported by the representative of the United States, suggested that the word "and" between the words "regulations" and "practices" be replaced by the word "or".

78. The representative of the Federal Republic of Germany said that he would have preferred the discussion of article 65 to have been based on the left-hand column as adopted on the first reading but his delegation could join in the consensus provided that its position was reflected in the report.

79. At the same meeting, the Working Group adopted a text for article 65 on second reading, as follows:

Article 65

1. Subject to the following paragraph, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

(a) Public services or bodies of the State in which such operations take place;

(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to national laws, regulations or practices of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

Article 66

80. The Working Group considered a text for article 66 from its 1st to 9th meetings between 27 September and 3 October 1988, on the basis of article 66 as contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. States Parties concerned shall co-operate in the adoption of measures regarding the orderly return of migrant workers and their families to the State of return [and their re-establishment in that State,] when they

decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

"2. In this respect, States concerned may agree on specific measures and modalities for the easing of the process of final return and, whenever possible, the promotion of appropriate conditions in the State of return.

"3. States Parties concerned may also co-operate with a view to ensuring the durable economic, social and cultural reintegration of migrant workers and members of their families in the State of origin on terms agreed upon by the States concerned."

81. The Working Group also had before it a revised proposal for article 66 submitted by the Mediterranean and Scandinavian group of countries reading as follows:

"1. States Parties concerned shall co-operate in the adoption of measures regarding the orderly return of migrant workers and their families to the State of return when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

"2. In this respect, States concerned may agree on specific measures and modalities for the easing of the process of final return and, whenever possible, the promotion of appropriate conditions in the State of return.

"3. States Parties concerned may also co-operate with a view to ensuring the durable economic, social and cultural reintegration of migrant workers and members of their families in the State of origin on terms agreed upon by the States concerned."

82. The representative of the Federal Republic of Germany, in stating that the proposal created great difficulties to his delegation, proposed to replace, in paragraph 1, the words "States Parties concerned shall co-operate in" with the words "States of origin shall co-operate with States of employment with a view to".

83. During the discussion the Chairman drew the Working Group's attention to article 6, part I, of the draft Convention, relating to scope and definitions, and pointed out that the words "State of normal residence" were used in the adopted articles rather than "State of return". He also suggested to replace the words "State of return" in paragraphs 1 and 2 with the words "State of origin or State of normal residence" and to insert in paragraph 2 the words "for resettlement" after the words "appropriate conditions".

84. In that connection, the representative of France voiced the concern of his delegation as regards the words "final return" in paragraph 2, because in his view, in many instances the return was never final. He suggested that those words should be replaced by the word "resettlement" or by the single word "return".

85. The representative of Morocco stated that in a case where a migrant worker

decided to return to a third country which was not his or her country of origin, her delegation could not see why her country should negotiate such return. Thus she emphasized that there was a need to be precise in the article.

86. In paragraph 1, the representative of Italy suggested replacing the words "when they decide to return" with the words "when they decide to resettle in that State".

87. The representative of the USSR said that replacing the word "return" with the word "resettle" would hardly meet the concern of many delegations. With reference to inserting the word "resettlement" in paragraph 2 he stated that, in his view, the paragraph could be better formulated by using the words "State of origin and/or State of normal residence".

88. The representative of Morocco stated that the use of the expression "State of normal residence" as suggested in the revised article did not cover the concern of her delegation because the States concerned in the provision were not specified. Thus, she proposed replacing the words "In this respect, States Parties" with the words "States of origin, States of employment or States of normal residence".

89. The representative of France, commenting on the statements by the representative of Morocco, stated that that part of the draft Convention specifically addressed the orderly return of migrant workers, bearing in mind that bilateral agreements had already been, or would be concluded between the State of origin and the State of employment. Therefore he did not see why the State of origin would not co-operate. He therefore proposed deleting the words "In this respect" at the beginning of paragraph 2.

90. The representative of Morocco reminded the representative of France that her comments related to paragraph 1 and not to paragraph 2.

91. The representative of Algeria stated that her delegation would have some difficulties with the article in the case of a migrant worker who decided to settle in a country other than his country of origin. She added that the resettlement of the migrant worker in his country of origin involved the application of social measures relating to such matters as housing and the education of the children of the migrant worker and that obviously the country of origin could not be required to co-operate in the orderly return of a migrant worker who might have decided to resettle in a third country after completing his stay in the country of employment.

92. As regards paragraph 2, the representative of Italy pointed out that there was no obligation in the paragraph imposed upon States; that was why the sponsors had used the term "States concerned may".

93. Referring to paragraph 3, the representative of Morocco proposed to delete the word "also" and to replace the words "may co-operate" with the words "will co-operate as much as possible" or with the words "will co-operate whenever possible".

94. After some discussion, the Working Group decided to take up article 66 in informal consultations.

95. The Working Group resumed consideration of article 66 at its 3rd meeting, on 28 September 1988, on the basis of the MESCA proposal as amended during informal consultations. The Chairman read out the text as it stood after the consultations:

"1. States Parties concerned shall co-operate in the adoption of measures regarding the orderly return of migrant workers and their families to the State of origin or the State of normal residence when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

"2. States concerned may agree on specific measures and modalities for the easing of the process of return and, whenever possible, the promotion of appropriate conditions for resettlement in the State of origin or the State of normal residence.

"3. States Parties concerned will co-operate with a view to ensuring the durable economic, social and cultural reintegration of migrant workers and members of their families in the State of origin or the State of normal residence on terms agreed upon by the States concerned."

96. Regarding the phrase "State of origin or State of normal residence", several representatives stated their preference for retaining only the reference to "State of origin". Several representatives said that it would be difficult to define the State of normal residence and thus the relation foreseen by article 66 should be limited between States of origin and States of employment.

97. Regarding paragraph 1, the representative of France expressed the difficulties of his delegation with the reference to migrant workers in an irregular situation. The representative of the United States noted that in many cases the State of employment was not even aware of returns of migrant workers to their State of origin, thus making co-operation between the two States unfeasible. He thus suggested the insertion in paragraph 1 of the words "as appropriate". The suggestion was supported by the representative of Venezuela.

98. Turning to paragraph 2 and noting that the term "final return" had been deleted, the representative of the Federal Republic of Germany said that it would be difficult to define what measures States should take in case the return of migrant workers was not final. Similar scepticism was expressed by the representative of Italy. The representative of Morocco suggested the deletion of paragraph 2. Her suggestion was supported by the representatives of France, Australia, Italy and Venezuela.

99. Referring to paragraph 3, the representative of Italy, supported by the representatives of the Federal Republic of Germany, the Netherlands, the United States, Australia and China, expressed preference for the expression "may co-operate" instead of "will co-operate". The representative of Yugoslavia, underlining the importance of co-operation in matters covered by paragraph 3, expressed preference for the expression "shall co-operate". The representative of Tunisia stressed the importance and the need for co-operation between States of employment and States of origin, in particular with a view to preventing massive

and disorganized returns of migrant workers to their countries of origin. The representative of India suggested that the words "if possible" could be inserted to facilitate acceptance of paragraph 3, while the representative of Morocco pointed out that the phrase "in terms agreed upon by the States concerned" already implied the obligation for co-operation. The representative of Italy stressed that paragraph 3 was nevertheless important as it indicated for the first time in written international law the direction which States should follow regarding the issue of reintegration of returning migrant workers.

100. After some discussion the Working Group decided to resume informal consultations on article 66.

101. At its 9th meeting, on 3 October, the Working Group resumed consideration of article 66.

102. The Chairman read the text of article 66 as it emerged from the informal consultations, as follows:

"1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

"2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin."

103. After a brief discussion, the Working Group adopted the text of article 66 on second reading.

104. The representative of Finland stated that the task of creating conditions for the resettlement of migrant workers should primarily be the responsibility of the State where the migrant workers decided to return. If Finland was in the role of a State of origin it would have to assume such responsibility.

105. The Working Group agreed to place on record that it was the understanding of the Working Group that the notion of return as implied in article 66 should be interpreted to mean voluntary return.

106. The representative of Canada stressed that the Working Group should take care to ensure that the meaning of each paragraph considered be clearly reflected in the language adopted. In his view, the formula used to clarify the meaning of articles 65 and 66 in the Working Group's report was not the most advantageous method of proceeding as it would likely create confusion for those interpreting the Convention at a later stage.

107. The representative of Algeria supported the statement of the representative of Canada on the need for precision in the drafting of the articles of the Convention.

108. The representative of the Federal Republic of Germany said that his delegation could not accept paragraph 2 of article 66 as it contained no reference to the orderly return specified in paragraph 1. In order not to obstruct a consensus, however, his delegation would be satisfied if its position was reflected in the report.

109. The text of article 66, as adopted on second reading, reads as follows:

Article 66

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

Article 67

110. The Working Group considered article 67 at its 4th meeting, on 28 September 1988, on the basis of article 67 as contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"Article 67

"1. The States Parties to the present Convention, including States of transit, shall collaborate with a view to preventing and eliminating [illegal or] clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

"(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

"(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons or entities who organize, operate or assist in organizing or operating such movements;

"(c) Measures to impose effective sanctions on persons, groups or entities who use violence, threats or intimidation against migrant workers or members of their family in an irregular situation.

"2. States of employment shall take all adequate measures that might be effective in eliminating employment in their territory of migrant workers in

an irregular situation, including sanctions on persons or entities employing such workers wherever appropriate. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures."

111. Speaking on behalf of the Mediterranean and Scandinavian group of countries, the representative of Finland said that the text of the article as it had emerged from the first reading (A/C.3/39/WG.I/WP.1) was acceptable. The group was also in favour of eliminating the brackets around the words "illegal or".

112. The representative of the United States said that his delegation could accept article 67 as adopted and, indeed, supported the basic thrust of the article. His delegation would like to note, however, that paragraph 1 (c) of article 67 could not be read to prohibit legitimate police activities affecting migrant workers or members of their families in an irregular situation. With respect to paragraph 2 of article 67, his delegation understood that to apply only to rights of migrant workers vis-à-vis their employers arising from employment that had already accrued at the point such employment was terminated owing to its illegality. The sentence thus served to mirror the protection accorded to such migrant workers by article 25, paragraph 3.

113. The representative of France stated that he considered paragraph 2 of article 67 redundant and that reference to article 25 could have been made instead. On a linguistic point, he said that the term "entités" used in the French text of subparagraphs 1 (b) and (c) was not correct and that a phrase such as "groupes de personnes" should be used instead. He also suggested that in the light of article 67 as adopted the Working Group could revert to the title of part VI and make reference there to legal migration. He pointed out that the title of part VI had not yet been adopted and suggested that the Group should revert to that question at its next session bearing in mind the concept of international development.

114. At the same meeting, the Working Group adopted article 67 on second reading, as follows:

Article 67

1. The States Parties to the present Convention, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons or entities who organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities who use violence, threats or intimidation against migrant workers or members of their family in an irregular situation.

2. States of employment shall take all adequate measures that might be effective in eliminating employment in their territory of migrant workers in an irregular situation, including sanctions on persons or entities employing such workers wherever appropriate. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

Article 68

115. The Working Group considered article 68 at its 4th and 9th meetings, on 28 September and 3 October 1988, on the basis of the following text which had emerged from the first reading (A/C.3/39/WG.I/WP.1):

"States Parties to the present Convention undertake that, when there are migrant workers and members of their families in an irregular situation on their territory, they [will not permit that situation to persist] [shall endeavour to ensure that such a situation does not persist]. In considering the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the State of employment and other relevant considerations, in particular those relating to the family [and social] situation of the workers. If it is decided not to permit a migrant worker or a member of his family to stay in the State of employment, their orderly return to their State of return or any other State in which their admission is guaranteed, shall be ensured as well as their protection during the period pending their departure and during their journey, as stipulated in part II of the present Convention."

116. Referring to the phrases in brackets in the first sentence of article 68, the representative of Finland, supported by the representatives of Denmark and Italy, expressed his preference for retaining the expression "will not permit that situation to persist" because, he said, illegal migration had to be fought and should not be tolerated in any way. Article 68 would be clearer if divided into three paragraphs. The issue mentioned in the last sentence of the article could be dealt with better in article 66. In the second sentence he would prefer the retention of the phrase "and social situation". The latter position was shared by the representative of Yugoslavia.

117. The representative of the Federal Republic of Germany expressed his preference for deleting the article as a whole because it would pose problems of verification and for the functioning of the supervisory body provided for in the convention to examine the reports of States parties. Moreover, he thought that article 68 was in contradiction with article 35. The representative of Denmark disagreed with that point and said that the thrust of article 68 was that States should not tolerate illegal migration, and that his delegation could accept the text on that understanding only.

118. The representative of the Netherlands said that the first sentence was problematic because it contained the assumption that Governments would know of all irregular migrant workers. The article had to specify that only when a Government had knowledge of irregular migrants should it have responsibility. That concern was shared by the representatives of France and Australia. The representative of the Netherlands suggested the following formulation for the first sentence:

"States parties shall pursue a policy aimed at the prevention of clandestine movements and employment of migrant workers in an irregular situation. If States find migrant workers and members of their families in an irregular situation on their territory they shall take appropriate measures to ensure that such a situation shall not persist."

He further suggested that the second sentence should start with the words "If considering". The third sentence could be deleted as redundant.

119. The representative of Australia stated that he could accept article 68 if the phrase "shall endeavour to ensure that such a situation does not persist" in the first sentence was retained. Preference for the phrase was also shared by the representatives of India, Canada and the United States.

120. The representative of Italy said that it was obvious that only if a State knew of illegal migrant workers would it have obligation to take measures. He suggested that the second sentence begin with the words "Whenever a State party is considering the possibility".

121. The representative of Greece pointed out that clandestine migration was encouraged in some parts of the world. It was therefore absolutely indispensable for a convention of migrant workers to contain an article specifying that States should take measures against illegal migration. That was precisely the purpose of article 68.

122. Referring to the second sentence of article 68, the representative of Canada said that it could be interpreted in two ways and could also suggest an obligation to regularize irregular migrant workers. In that regard, several delegations stated that regularization should not be made a requirement for States informed of the presence of irregular migrant workers.

123. The representative of the Soviet Union suggested that article 68 be divided into three paragraphs. The first paragraph would contain the first sentence, as it appeared after the first reading, with the retention of the phrase "shall endeavour to ensure that such a situation does not persist". The second paragraph would consist of the second sentence beginning with the words "In this respect States Parties may consider the possibility of regularizing". The third paragraph would consist of the third sentence as it had emerged from the first reading.

124. After discussion at the 4th meeting, the Working Group decided to hold informal consultations on article 68.

125. At its 9th meeting, on 3 October 1988, the Working Group resumed consideration of article 68.

126. The Chairman read the text of article 68 as it had emerged from the informal consultations, as follows:

"1. States Parties, when there are migrant workers and members of their families on their territory who are considered to be in an irregular situation, shall take all appropriate measures to ensure that such a situation does not persist.

"2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the State of employment and other relevant considerations, in particular those relating to the family situation of the workers."

127. The representative of the Federal Republic of Germany objected to the assumption, implicit in paragraph 1 and explicit in paragraph 2 of the text as read out by the Chairman, that regularization was an appropriate method of combating irregular migration. He stated that his delegation did not wish to break the consensus and would be satisfied to have its views reflected in the report.

128. Regarding paragraph 1, the representative of the United States proposed that the phrase "on their territory" be changed to read "within their territory". With regard to paragraph 2 he proposed that the words "the family situation of the workers" be replaced with the words "their family situation".

129. The representative of India questioned the necessity for including the words "who are considered to be" in paragraph 1 and proposed that the words be deleted.

130. The representative of the Netherlands objected to the suggestion made by the representative of India and explained that the words were necessary to ensure that only the specific group of irregular workers known to the States parties were covered by the article. That was to ensure that States parties did not have obligations imposed on them regarding people whose existence they were unaware of. With reference to paragraph 1, he proposed that the word "shall" be moved and inserted after "States Parties" at the beginning of the sentence.

131. The representative of Byelorussian SSR commented, with reference to paragraph 1, that the inclusion or not of the words "who are considered to be" would not change the meaning of the paragraph.

132. The representative of France supported the proposal of the representative of India in order to ensure that the article encompassed all workers in an irregular situation. Also with reference to paragraph 1 he proposed that the words "all appropriate" be replaced by the words "the necessary".

133. The representative of Yugoslavia supported the representatives of India and France in proposing that the words "who are considered to be" be deleted from paragraph 1. She also proposed that the words "and social" be inserted between "family" and "situation" in paragraph 2. However, she indicated that she did not

want to block a consensus and that she would be satisfied to have her proposal reflected in the report.

134. The representatives of Italy and the Netherlands proposed that the words "who are considered to be" be left out of paragraph 1 and suggested that by way of compromise a note explaining the meaning of the paragraph should be included in the report.

135. At the same meeting, the Working Group adopted a text for article 68 as read out by the Chairman.

136. The Working Group agreed that paragraph 1 of article 68 was meant to create obligations for States parties relating only to migrant workers and members of their families who were in an irregular situation. It was not the intention of the Working Group to require from States parties a policy which would lead to discriminatory measures against migrant workers or members of their families or to establish their status as irregular migrant workers or members of their families.

137. Following the adoption of article 68, the representative of Canada stated that the proposal by the representative of the Netherlands to include the words "who are considered to be" in paragraph 1 clarified the meaning and intention of the paragraph. He stated that, like the representative of the Netherlands, he had not pursued the point in order not to block a consensus. However, he requested that the Working Group take special care to ensure that the meaning of each paragraph considered be clearly reflected in the language adopted. He further stated that the formula used to clarify the meaning of articles 65 and 66 in the Working Group's report was not the most advantageous method of proceeding as it would likely create confusion for those interpreting the Convention at a later stage.

138. The text of article 68, as adopted on second reading, reads as follows:

Article 68

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

Article 69

139. The Working Group considered article 69 at its 4th and 11th meetings, on 28 September and 4 October 1988, on the basis of the following text which had emerged from the first reading (A/C.3/39/WG.I/WP.1):

"[(1) The State Parties shall, if not yet provided for in their legislation, [in the same manner as they do for national workers] provide measures to establish and ensure that working and living conditions of migrant workers and members of their families are in keeping with the standards of fitness, safety, health and principles of human dignity. Such measures shall include inspection of the working and living premises of migrant workers and members of their families by such competent authorities as designated by each State Party concerned. The said authorities shall also make recommendations for the improvement in the quality of these conditions.

"(2) The States Parties shall ensure that, wherever necessary, assistance is provided for the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families and that death compensation matters are promptly settled.]"

140. The representatives of Finland and Italy said that paragraph 1 of article 69 provided for a minimum standard of working and living conditions for migrant workers, while the Convention had already provided for equality of treatment in working conditions; equality of treatment in living conditions would be difficult to assess and might require control which might infringe upon the right to privacy of migrant workers. Thus they favoured deletion of this part of the article. The latter opinion was shared by the representatives of the United States, the Soviet Union and Morocco. The representative of Morocco felt that paragraph 1 was superfluous given the provision of articles 25 and 43; the only idea added by article 69 was the notion of inspection or control by the State of the living conditions of migrant workers.

141. The representative of India pointed out that in several parts of the world the living conditions of migrant workers were deplorable and therefore the Convention should make some provision on this issue ensuring that living standards of migrant workers would be comparable to those of the rest of the population. This view was shared by the representatives of Yugoslavia and China. The representative of Yugoslavia stated that the article was an adequate place to deal with the proposal of Portugal about co-operation of States parties in recognition of the decision of the competent national authority concerning alimony rights of members of the family of migrant workers. The representative of Italy supported that view.

142. The Chairman drew attention to article 11 of the International Covenant on Civil and Political Rights, saying that the Working Group could perhaps follow its wording in article 69 of the Convention. Article 69 would cover everyone and would go beyond the Covenant in providing for specific measures by Governments regarding living conditions.

143. The representative of Denmark suggested the following wording for paragraph 1 of article 69:

"The States parties shall in the field of working and living conditions provide measures to establish equal treatment with nationals for migrant workers and members of their families."

144. The representative of Morocco was of the opinion that paragraph 1 of article 69 applied to migrant workers with lawful status. The representative of France expressed the view that such provisions on living conditions should be valid for everyone, migrant workers in regular and irregular situations alike. He suggested that perhaps a relevant provision could be added in part II of the Convention, perhaps as article 7 bis.

145. Regarding paragraph 2 of article 69, the representative of the United States said that there are consular functions to be performed on the matters of repatriation of the bodies of deceased migrant workers and death compensation. However, if this was interpreted as involving financial burdens for the State of employment, his delegation could not agree. As for the requirement for prompt settlement of compensation matters, he noted that in the United States and most likely elsewhere that was frequently impossible, even for nationals.

146. The representatives of Morocco, Sweden and India expressed the conviction that paragraph 2 of article 69 was a useful one to retain. The representative of India added that consular assistance was unfortunately not always given in the case of death of migrant workers.

147. The Working Group decided to postpone further discussion on article 69 and hold informal consultations.

148. At the 11th meeting, on 4 October 1988, the Chairman announced that as a result of informal consultations it had been agreed that article 69 would cover only the concerns of paragraph 1 of the text as it had emerged from the first reading (A/C.3/39/WG.I/WP.1) and that paragraph 2 would be a separate article 69 bis. The Chairman read out the texts of articles 69 and 69 bis as they had been formulated during the informal consultations:

"Article 69

"The States Parties shall take measures not less favourable than those applied to national workers to ensure that working and living conditions of migrant workers and members of their families are in keeping with the standards of fitness, safety, health and principles of human dignity."

"Article 69 bis

"The States Parties shall facilitate, wherever necessary, the repatriation to the State of origin of the bodies of deceased migrant workers or members of their families and the prompt settlement of death compensation matters, if any."

149. Referring to article 69, the representative of the Federal Republic of Germany stated that his delegation could join the consensus on the understanding that the expression "not less favourable than those applied to national workers" meant that the State had the obligation to grant to migrant workers the same conditions on the legal level and not the obligation to establish for migrant workers conditions that were more favourable than those of nationals. This understanding was also shared by the representative of Norway.

150. The representative of Finland proposed to amend the text of article 69 as read out by the Chairman by replacing the words "national workers" by "nationals". His proposal was accepted by the Working Group.

151. The representative of the United States said that article 69 should be applicable to regular migrant workers only and proposed the insertion of the words "in a regular situation" to clarify this point.

152. The representatives of Norway and Australia agreed with the United States proposal. The representatives of Denmark, Sweden and China, although agreeing that article 69 was applicable only to migrant workers in a regular situation, felt that it was not necessary to include a phrase to that effect because the title of part VI would cover this idea. Some delegations also pointed out that since previous articles in part VII referred to migrant workers in an irregular situation it was necessary to make a clear reference to migrant workers in a regular situation in article 69.

153. The representative of Italy suggested that since article 69 referred to migrant workers in a regular situation it should be placed in part IV of the Convention as article 54 bis.

154. After a brief discussion the Working Group adopted article 69 on second reading at the same meeting, as read out by the Chairman and amended by Finland and the United States:

Article 69

The States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

155. The representative of France expressed regret that the article applied only to migrant workers in a regular situation and regretted its possible consequences.

156. Referring to article 69 bis, the representative of the United States said that, in his delegation's understanding, the issues contained therein were already covered by the existing conventions on consular relations.

157. Turning to article 69 bis as read out by the Chairman, the representative of Algeria, referring to the part on death compensation matters, said that she could not accept the proposed text principally because of the linkage established between the repatriation of the body of the deceased migrant worker and compensation for the death of the migrant worker. She felt that if this important issue was to be dealt with in such a cursory manner, she would prefer to omit any reference to it in the Convention and let it continue to be dealt with bilaterally, by agreement between the countries concerned. Her delegation also suggested the deletion of the expression "wherever necessary" in connection with the repatriation of the body of the migrant worker because it was clear that the States concerned were obligated for humanitarian reasons to facilitate the repatriation to the State of origin of deceased persons, whether they be the migrant worker or members of his family.

158. The representative of Morocco, agreeing with the representative of Algeria, suggested that article 69 bis be divided into two paragraphs, the first covering only the issue of repatriation of the bodies of deceased migrant workers and the second reading as follows:

"2. The settlement of death compensation will be carried out according to article 27 and bilateral agreements".

159. The representative of Greece supported the Moroccan proposal and suggested an amendment, namely to add the words "if any" after the words "death compensation". The representative of Cape Verde, supported by the representatives of Egypt and Italy, underlined that the provision on repatriation of the bodies of deceased migrant workers should apply in all situations, whether those migrant workers were in a regular or in an irregular situation. The representative of Cape Verde also suggested that the provision regarding death compensation should be formulated as a separate article, probably in another part of the Convention.

160. At the 14th meeting of the Working Group, on 5 October 1988, the representative of Morocco read out a proposal for article 69 bis, paragraph 2, as follows:

"When questions of compensation are linked to the death of such workers, they shall be settled under the relevant provisions of this convention and/or under bilateral and multilateral agreements."

161. The Working Group did not pronounce itself on that proposal.

162. At its 11th meeting, the Working Group decided to adopt article 69 bis containing only the provision on the repatriation of the bodies of deceased migrant workers and to deal with the issue of death compensation at a later stage. Article 69 bis, as adopted on second reading, reads as follows:

Article 69 bis

The States Parties shall facilitate, wherever necessary, the repatriation to the State of origin of the bodies of the deceased migrant workers or members of their families.

PART VII (formerly PART VI)

Application of the Convention

163. The Working Group considered this part of the draft Convention from its 6th to 14th meetings, from 29 September to 5 October 1988.

164. During the consideration of this article, the Working Group had before it a new text for article 70 submitted by the representatives of Finland, Greece, Italy, Morocco, the Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia (A/C.3/43/WG.1/CRP.5). The Working Group also had before it proposals for article 70 submitted by the delegation of Mexico (A/C.3/43/WG.1/CRP.1/Rev.1).

165. At its 6th meeting, on 29 September, the Working Group agreed to proceed with a general exchange of views on all the proposals relating to part VII (formerly part VI) of the draft Convention.

166. The representative of Finland introduced the proposals contained in document A/C.3/43/WG.I/CRP.5 and stated that the application of the Convention was subject to the principles of effectiveness, consistency and efficiency which had guided the sponsors in their efforts to solve the problem of the supervisory machinery of the Convention. He added that the sponsors had avoided changes to earlier texts as much as possible. With reference to document A/C.3/43/WG.I/CRP.1/Rev.1, he said that the text in the left-hand column was based on an original MESCA proposal which had been changed in the first reading. He pointed out that the main difference between the earlier proposals was the role to be attributed to ILO in the supervisory machinery. The difference became evident if one studied article 70, paragraph 2 (a) and (b) in the left-hand column of document A/C.3/43/WG.I/CRP.1/Rev.1, representing the original MESCA proposal; article 72, paragraph 2 (a) and (b) of the right-hand column of the same document, representing the alternative proposal by the Mexican delegation; and article 72, paragraph 4 (a) and (b) of the new proposal in document A/C.3/43/WG.I/CRP.5, representing the new idea of the sponsors. He noted that no one had so far, in the group or elsewhere, denied the special expertise of ILO in the field of migration. It was not only a question of expertise but also of special competence. That competence had been defined already in the Constitution of the ILO as general competence, not simply competence in certain restricted issues. Furthermore, he stated that ILO was the only global organization which had established universal conventions in the area of migration. He observed that those were also the major differences between ILO and other international organizations and bodies. Those other bodies had competence and expertise in certain issues covered by the Convention. They should naturally contribute to the application of the Convention, but their prerequisites in providing such assistance were clearly more limited than those of ILO. He noted that the original idea of the group of Mediterranean and Scandinavian countries was that ILO and the General Assembly of the United Nations should have joint responsibility for the implementation of the new migrant workers Convention. That would have been made possible by both the ILO Governing Body and the States parties nominating voting members to the supervisory body. Such a method would have solved the problems of consistency in substance of the application.

167. Over the years, in his view, the idea had proved to be unacceptable to some delegations for several reasons. He felt that it would be an innovation in legal terms of application machineries in similar instruments, which might result in matters of competence between two bodies within the United Nations system. Also, some delegations had felt that the sovereignty of the States parties in nominating experts to the Committee would be questioned, and the Committee might have members who were not nationals of ratifying States. He also pointed out that the other idea, put forward by the opponents, had, however, been equally unacceptable to the group of Mediterranean and Scandinavian countries and a number of other delegations. It would reduce the role of ILO to that of a mere post office sending letters to the Committee through the Secretary-General; and it would not be in the interest of effective implementation only to have written reports which the Committee might consider or leave aside at will. In order to guarantee consistency

and effective use of ILO expertise, the reports and comments would have to be analysed, explained by persons present and taken into account by the Committee. It would also be difficult and indeed contrary to both the content of the Convention and to the ILO Constitution to enumerate certain articles where ILO was supposed to have competence. The preparatory work of the Working Group had already shown that most of the articles of the Convention were connected and interrelated. That is why the alternative proposals also had been rejected on all three grounds of effectiveness, consistency and efficiency. He stressed that the new proposal put forward by the sponsors was therefore an effort not only to find a compromise, but also to find a new solution. It was based on the conviction that the application machinery would greatly benefit from the use of ILO expertise. That expertise could be provided both with respect to the situation of migrant workers and to the legal aspects of supervising existing international instruments in that field. There was also a need to avoid unnecessary and burdensome reporting procedures which only result in heaps of documents which nobody reads. Therefore, he felt that it was much more efficient to ensure the presence of such expertise, which could be consulted on concrete issues. However, it was unnecessary - and probably even counter-productive - to introduce external elements in the decision-making process. He added that the presence of non-voting representatives from ILO had now been proposed by the sponsors. The result would be a situation rather similar to the one that existed during the preparatory work in the Working Group. In addition, the sponsors were willing to invite representatives also from other organizations in matters which fell within their special competence. As regard the size of the supervisory body, the sponsors felt that it should be relatively small in order to guarantee efficiency. Furthermore, it should not be larger than the minimum number of the ratifications foreseen in the final provisions. On the other hand, the body should not be too small either in order to ensure that all the eligibility criteria foreseen in paragraph 2 of article 70 could be taken sufficiently into account. When the number of ratifications increased, so did the number of migratory circumstances which had to be taken into account in the election process. Therefore, the sponsors had foreseen a system whereby the number of the Committee members might be increased. Such an increase was foreseen also in some other conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women. He stated that, in view of the financial problem of the United Nations, the issue of financing the supervisory mechanism was important. He pointed out that there were various possibilities: financing from the United Nations budget, financing by the States parties to the Convention, or shared responsibility, whereby fixed costs would be covered by the United Nations budget and the cost of the experts by the States parties. The sponsors favoured financing from the United Nations budget. He recalled that when the Minister for Foreign Affairs of Finland had addressed the General Assembly this year, the latter had stated clearly that even if Finland did not agree with all the programmes put forward by the United Nations, it was prepared to pay its share of the costs when such programmes were legally set up by United Nations bodies. Experience of supervisory machineries financed by States parties was not encouraging. Furthermore, State-party financing might become a deterrent to ratification.

168. Finally, he remarked that in article 74 there were provisions for the settlement of disputes. The sponsors had chosen an optional procedure in accordance with the principles set forth in the Covenant on Civil and Political

Rights. He noted that the supervisory body of the Convention should not be a tribunal, but a body of experts providing good offices for those States that wished to use their services.

169. During the exchange of views delegations expressed their thanks and appreciation to the sponsors for their constructive efforts in elaborating, in Rabat, the proposals contained in document A/C.3/43/WG.I/CRP.5.

170. The representative of the Netherlands said that his delegation had originally been in favour of a more innovative approach but since there seemed to be hardly any support for such an approach it had been glad to support as a sponsor the proposals contained in document A/C.3/43/WG.I/CRP.5. For his delegation, however, it was extremely important that the expenses of the Committee be financed by the regular United Nations budget. If the proposal were not accepted by the Working Group, the Netherlands delegation might have to reconsider its position.

171. The representative of Denmark stated that although his delegation was not a sponsor of the proposals contained in document A/C.3/43/WG.I/CRP.5, he believed that the text could present an acceptable compromise despite some minor problems that his delegation might encounter.

172. The representative of Canada stated that his delegation could accept much of what was included in the new provisions. He added that there were elements that caused some concern. In the proposed article 70, for example, he expressed his strong preference for the creation of a smaller committee composed of 10 members, with no provision for the enlargement of such a committee. In his view, that preference was based on the need for an efficient committee which would not create an excessive financial burden for the United Nations or for the States parties. He pointed out the recent experience of the newly created Committee against Torture, composed of 10 experts, which had proven to be very effective, with experts from different geographical regions and different legal systems. He queried the necessity of including a reference to States of origin and States of employment in paragraph 2 of article 70, since according to the definition of those terms in the Convention, almost all countries would fall under both categories. On the question of financing the committee, he supported the formula outlined in the proposal of the enlarged Mediterranean and Scandinavian group of countries, calling for the United Nations to assume all costs. In supporting that formula, however, he reminded the Working Group of the need to avoid creating too excessive and unnecessary a financial burden for the United Nations through the acceptance of a large committee. He expressed his support for the remainder of the MESCA proposal, including the role outlined for ILO, but added that some minor changes were likely necessary to clarify and improve certain provisions.

173. The representative of the Federal Republic of Germany pointed out that the text could be satisfactory to his delegation despite some elements which could present it with some problems, but he would indicate them in the course of the discussion of the provisions of the articles. He endorsed the role given in the proposal for ILO participation. He said that his delegation would prefer a smaller committee than had earlier been proposed. He stated that the way in which the Committee was to be financed should be further discussed. He said that the Working Group might not have the expertise to discuss the financing of the Committee.

174. The representative of the United States pointed out that implementation machinery established by the various human rights instruments had grown somewhat out of control. His delegation would certainly have been willing to consider enforcement mechanisms other than the establishment of a new committee. He could nevertheless go along with the consensus of the group to establish a new committee, so long as it was efficient, streamlined and impartial. With regard to its structure, he shared Canada's view that the committee size should be small. Such small committees were more economical and efficient than large committees. He noted that the torture Convention and the draft child Convention had established 10-member monitoring committees. With regard to the role of ILO in the application of this Convention, he recognized that the recent MESCA draft text represented a compromise. However, his delegation still favoured inclusion of some ILO-appointed members to the Committee with full voting rights. In that regard, he reminded the Working Group that Committee members would be independent experts, not advocates of different States. His delegation could reluctantly accept a minimum of two non-voting representatives of ILO on the committee. Further, he argued that the Convention must ensure that the Committee would take into account reports prepared by ILO. Referring to financing, he could not accept the MESCA proposal for full funding by the United Nations. Instead, he believed that the Committee must receive its funding from States parties. In support of that position, he pointed out that negotiation of the Convention under the auspices of the United Nations did not make it a United Nations document. Rather, it would be a creature of the States that became party to it in so far as only States parties were obligated to comply with its provisions. Moreover, he believed that it was unjust to require all Member States of the United Nations to bear the expenses of a committee established to monitor a convention ratified by, at least initially, a very few States. In that connection, the delegate of the United States also expressed the view that the current draft's requirement of only 15 ratifications for the Convention to enter into force was too low. He pointed out that older United Nations conventions typically required 35 ratifications and that, to his knowledge, no comparable instrument called for less than 20. In addition, United Nations funding itself would not ensure that the committee always had funding. It could be argued, in fact, that United Nations funding of the Committee would compromise its independence when United Nations funds were scarce. Finally, he agreed with the delegate of the Federal Republic of Germany that the Working Group might not have the competence to make the final decision on that issue. Instead, it might be necessary to leave the decision on funding to the Third Committee or to the General Assembly as a whole.

175. The representative of the Soviet Union said that his delegation was ready to show flexibility regarding the number of experts on the future committee. He shared the view expressed by other delegations that a smaller number might facilitate agreement on the modalities for financing the activities of the Committee. He reiterated the position of his delegation that the Convention should provide for financing from the regular budget of the United Nations. Since the Convention was intended to safeguard the rights of a great many people throughout the world, those rights were not only a matter for States Parties to the Convention but also for the entire Organization and thus, financing by the United Nations was quite appropriate.

176. The representative of the Byelorussian SSR in his general comments proposed to change the last sentence of paragraph 1 of article 72 contained in document A/C.3/43/WG.I/CRP.5 to read "States Parties may participate in meetings of the Committee when their respective reports are being considered" and to add at the end of paragraph 2 of article 72 the following sentence: "The Committee may invite the International Labour Organisation to send its representative to deliver the commentaries during the deliberations of the Committee, but without the right to vote." He suggested to delete paragraph 4 (a) of article 72 and proposed to merge paragraph 4 (b) of article 72 with paragraph 3 of article 72.

177. The representative of Egypt stated that his delegation would support a committee financed by the United Nations because that would ensure the impartiality of the experts and the effective functioning of the Committee. He said that his delegation would not support a supervisory role of the International Labour Organisation over the Committee of experts.

178. The representative of Spain expressed his support for a committee financed by the United Nations as the Convention was an instrument elaborated under United Nations auspices.

179. The representative of India indicated that the method of funding adopted for the proposed committee would determine its size. In that context, she requested that the Secretariat furnish facts and figures about expenses relating to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (financed by States parties), the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Human Rights Committee. The representative of India also stated that to restrict the Committee to 10 experts would make it too small, taking into account the importance of equitable, geographical representation and the need to maintain a balance with States of employment and States of origin. She was strongly supported by the representative of Yugoslavia.

180. In that connection, at the 15th meeting, on 7 October 1988, the Secretariat read a paper which at the request of the Chairman was circulated to the Working Group providing information concerning the financing of various committees of experts established under United Nations human rights instruments, such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. A comprehensive list of other organs serviced by the Centre for Human Rights and financed by the regular budget of the United Nations was also circulated. The attention of the Working Group was also drawn to document E/1988/85 entitled "Methods applied under different human rights instruments as regards their financial implications", to document CERD/SP/34 and to document A/43/607 entitled "Questions of financing the expenses of the members of the Committee on the Elimination of Racial Discrimination".

181. The representative of Tunisia said that his delegation did not have an immutable position on the size of the Committee but that the linkage between its size and its financing should not be exaggerated. He also stressed that the Working Group might be guided by the example of the Human Rights Committee.

182. The representative of Australia mentioned that there was no link between the size of a committee and its status. He indicated that it was more important to have a committee of a size appropriate to its functions. He also stated that his delegation did not have fixed views on what size the proposed Committee should be but that it would be wrong to assume that the problem of funding the Committee would be resolved if the source of funding were the United Nations regular budget.

183. The representative of Sweden indicated that although he was a sponsor of the proposal for article 70 contained in document A/C.3/43/WG.I/CRP.5, he was persuaded by the arguments of the representatives of Canada, the United States, the USSR and Australia to restrict the size of the proposed Committee to protect migrant workers, a position consistent with current trends in standard setting. He stated that whether the proposed committee was funded by the United Nations or by States parties, finance would be a problem and therefore advocated a smaller committee of 10 experts.

184. The representative of Finland pointed out that the size of a committee was not the only factor which affected its finances. He indicated that the frequency and duration of sessions as well as of the quantity of documents needed or generated by the committee were also important. He felt that taking into account the criteria mentioned in paragraph 2 for the distribution of members, 12 experts would be the minimum possible to satisfy its terms.

185. The representative of Colombia suggested that the proposed Committee should consist of 10 experts, indicating that a small committee would be more effective than a large one. However, he questioned whether with a small committee the ILO representation proposed by article 72 would not be disproportionate.

186. The representative of France stated that the role of the proposed Committee should not be exaggerated. He suggested that the mandate of the Committee be strictly confined to the protection of migrant workers and suggested that the size of the committee be restricted accordingly.

187. The representative of Italy indicated that as independent experts the members of the proposed committee should not represent specific interest groups. The object of distribution of membership was to allow the experiences of various cultures and legal systems to be drawn upon by the Committee in carrying out its functions. Since States parties would be responsible for electing the experts they should have confidence in them. The representative of Italy therefore advocated a committee limited in size to 10 or 12 members. He also indicated that the major expenses of a committee consisted in the activities of the Secretariat servicing it rather than of its members.

188. With reference to paragraph 1 of article 70 the representative of Cape Verde suggested that the size of the proposed Committee be based on ensuring its cost efficiency and effectiveness and further suggested that United Nations funding would be the best way to monitor the committee's expenses. He questioned whether there should be almost as many experts in the Committee as States parties to the Convention when the Convention first comes into force. He indicated that this situation obliged States parties to put forward nominees for election to the

Committee whether or not they wanted to do so and regardless of whether they had appropriate candidates. He also questioned the need for the committee to come into full operation in two States and suggested that "acceptance of approval" by States be incorporated where paragraph 1 speaks of "ratification or accession". As regards paragraph 2 he suggested that "principal legal systems" was too vague a criterion to use as a major element in deciding the composition of the proposed Committee, especially in the light of the fact that the issue of migrant workers was not a strictly legal one. As regards paragraph 6 he proposed that the words "be invited to" should be inserted into line 3 after the word "shall" and suggested that a mechanism be adopted to break the deadlock if the committee was not willing to accept a State party's nominee. With reference to paragraph 2 of article 72 he suggested that the information should also be sent to the General Assembly, consistent with paragraph 5. He further proposed that non-governmental organizations in consultative status with the Economic and Social Council be allowed to comment on situations where problems of migrant workers come to light.

Article 70

189. At its 7th meeting, on 30 September 1988, the Working Group considered a text for article 70 as contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"Article 70

"1. [For the purpose of reviewing the application of the present Convention], there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Their Families (hereinafter referred to as 'the Committee') consisting of [eighteen] experts of high moral standing, impartiality and recognized competence in the field covered by the Convention. [The Committee shall carry out the functions hereinafter provided for.]

"2. (a) [Twelve] members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person. [These persons shall be nationals of the nominating State.]

"[(b) The remaining six members shall be appointed by the Governing Body of the International Labour Office.]

"(c) [All] members shall serve in their personal capacity.

"3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States

Parties not later than one month before the date of each election, together with the curricula vitae of the persons thus nominated.

"4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of votes of the States Parties present and voting.

"[5. The Secretary-General shall inform the Director-General of the International Labour Office of the result of the elections and shall invite the Governing Body of the International Labour Office to appoint the remaining members.]

"6. The members of the Committee shall serve for a term of four years. However, the terms of [six] [nine] of the members elected in the first election [and three of the appointed members] shall expire at the end of two years; the names of these nine members shall be chosen by lot by the Chairman of the Committee.

"7. If an expert has ceased to function as a member of the Committee before the expiry of his term, the State Party which nominated the expert [or the Governing Body of the International Labour Organisation which appointed the expert,] shall appoint another expert for the remaining part of the term. [In cases where the new expert is appointed by the State Party], the appointment is subject to the approval of the Committee.

"[8. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.]

[8. The States Parties shall be responsible for all expenses incurred in connection with the administration of the present Convention pursuant to part VI and shall reimburse the United Nations for all costs of meetings, staff, facilities and emoluments.]

"[9. The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.]

"10. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations."

190. The Working Group decided to proceed paragraph by paragraph.

Article 70, paragraph 1 (a)

191. After a general exchange of views, the Working Group decided to take up paragraph 1 of article 70 in informal consultations.

192. At the 12th meeting, on 4 October 1988, following informal consultations, the Working Group adopted on second reading paragraph 1 (a) of article 70, as follows:

Article 70

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Their Families (hereinafter referred to as "the Committee").

Article 70, paragraph 1 (b)

193. At its 14th meeting, on 5 October 1988, the Working Group considered paragraph 1 (b) of article 70.

194. The Chairman read out the text of paragraph 1 (b) as it had emerged from informal consultations, as follows:

"(b) The Committee shall consist, at the time of entry into force of the Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention."

195. The representative of Greece supported the proposal for paragraph 1 (b) as read out by the Chairman.

196. The representative of Australia reiterated his view that a committee of 10 experts would be adequate and in line with current international practice. However, he agreed to support the proposal for paragraph 1 (b) as read out by the Chairman in the interest of consensus. His agreement had been assisted by the proposed requirement of 20 ratifications, accessions, etc. for entry into force and 41 ratifications, accessions, etc. for an increase in size of the Committee to 16. He nevertheless noted the financial implications of the difference between 10 and 12 members.

197. The representative of the Federal Republic of Germany took the view that a committee of 10 or 12 experts would have been sufficient. He however indicated in a spirit of compromise that he was prepared to join the consensus.

198. The representative of Morocco expressed support for the size of the Committee as proposed in paragraph 1 of article 70 as contained in document A/C.3/43/WG.I/CRP.5. She pointed out that the Convention was a large one covering many details and that it would necessitate a large committee. She suggested that such a committee would more easily allow for geographical distribution but that in the interest of a consensus she would go along with the proposal for paragraph 1 (b) as read out by the Chairman. The representative of Egypt stressed the importance of geographical distribution in the composition of the Committee.

199. The representative of Sweden indicated that for financial reasons and in order

to ensure an effective implementation of the Convention he would have preferred a committee of 10 experts but that in a spirit of compromise he would follow the consensus.

200. The representative of the United States stated that he would have preferred a smaller committee and that there was no reason why a committee of 10 experts could not achieve geographical distribution among its members. He also stated that he would have preferred the Committee to come into operation in a one-step process. He however indicated that in a spirit of compromise he would support the consensus.

201. The delegations of Morocco and Algeria stated that for the present and bearing in mind the consensus which appeared to be developing, they could, in a spirit of compromise, accept the proposed figures for the composition of the organ which would be responsible for the application of the Convention, although they still had doubts regarding the significance of the number which was unlikely, in their view, to ensure the implementation of the principle of equitable geographic distribution.

202. The representative of India supported the MESCA text of an 18-member committee. She felt that it would have been better to have a larger committee to ensure more equitable geographical representation. She indicated, however, that she did not wish to block the consensus and would accept the proposal read out by the Chairman.

203. At the same meeting the Working Group adopted a text for paragraph 1 (b) of article 70 as read out by the Chairman.

204. It was understood by the Working Group that the adoption of paragraph 1 (b) did not decide the question as to who would be responsible for the funding of the proposed Committee under the Convention.

205. The text of paragraph 1 (b), as adopted on second reading, reads as follows:

(b) The Committee shall consist, at the time of entry into force of the Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

Article 70, paragraph 2

206. At its 8th meeting, on 30 September, the Working Group took up consideration of paragraph 2 of article 70.

207. Referring to the proposal contained in document A/C.3/43/WG.I/CRP.5, the representative of the Federal Republic of Germany suggested that his delegation would have preferred to see the inclusion of a clause stating that the persons to be nominated shall be nationals of the nominating State, as was suggested in the original proposal (A/C.3/39/WG.I/WP.1).

208. The representative of the Netherlands stated that although his delegation was in favour of the proposal contained in document A/C.3/43/WG.I/CRP.5, he could have

accepted the deletion of the reference to "States of origin and States of employment", since often it was not clear whether a State should be considered as a State of origin or a State of employment. The Netherlands, for example, could be considered as a State of origin if one took into account the fact that there were more Dutch migrant workers abroad than foreign migrant workers in the Netherlands.

209. The Chairman questioned the desirability of allowing States to have a changing status as State of origin or State of employment because such a situation would allow some experts to become permanent members of the Committee by representing the same State under different umbrellas. He observed that the re-election of members was not covered by the proposal in document A/C.3/43/WG.I/CRP.5 for paragraph 2 of article 70 and questioned whether there should not be a means of ensuring some degree of rotation in the members elected to the Committee.

210. The representative of Italy indicated that the nationality of any nominee of the International Labour Organization (ILO) to the Committee would not affect the election of another person having the same nationality to the Committee, as the ILO nominee would serve in his capacity as an international civil servant and not as a member of his own State. The representative of Italy also stated that as States were ultimately responsible for electing members to the Committee they should be free to decide if they wanted to elect more than one person of the same nationality. He proposed that a full stop be put after the words "States Parties" in the second line of paragraph 2 (a) of the proposal for article 70 contained in document A/C.3/43/WG.I/CRP.5, and that the rest of the subparagraph should be replaced by a sentence saying that each State party should nominate one candidate for election and that the various considerations enumerated therein should be borne in mind.

211. The representative of the USSR stated that his delegation was flexible on the number of experts; however, he felt that a number lower than 18 would help in reducing the costs. He said that it should be clearly indicated, in the proposed paragraph 2 of article 70, that States should only nominate their own nationals. Referring to the last sentence of paragraph 2 (b) of the proposal contained in document A/C.3/43/WG.I/CRP.5, he proposed reversing it to read "The members shall be elected and shall serve in their personal capacity".

212. The representative of China, while supporting the proposal made by the Soviet Union, stated that his delegation would have difficulty in accepting that States be allowed to nominate experts who are not their nationals. He stressed that his delegation was in favour of taking geographical distribution into account.

213. The representative of Algeria felt that she could not accept a provision which did not state clearly that the experts should be nationals of the States parties which nominated them. Since it could establish a dangerous precedent, the representative of Algeria proposed to reproduce the clause in the Covenant on Civil and Political Rights, which stipulated that the experts proposed should be nationals of the States parties nominating them.

214. The representative of India stated that the inclusion of a provision that would leave open the possibility for States to nominate non-nationals would create

a dangerous precedent. Therefore, she said that her delegation would object to the inclusion of such a provision.

215. While supporting the suggestion made by the representative of Italy, the representative of Denmark in order to reach a consensus in the Working Group, however, proposed that the sponsors reinstate the clause "The persons shall be nationals of the nominating States".

216. The representatives of Finland and France expressed the view that States parties would most likely nominate their own nationals; however, in their views, that provision should not exclude the possibility for a State to nominate a non-national who happened to have been a migrant worker.

217. The representative of Yugoslavia, while fully understanding what was behind the proposal of the Mediterranean and Scandinavian group of countries, expressed her support for the views expressed by the representatives of the USSR and India. She stressed that her delegation attached particular importance to the question of geographical distribution. In that respect, she felt that a State's experience in migratory flow should also be taken into account.

218. The representative of the Byelorussian SSR also expressed his support for the inclusion of a clause that States should nominate their own nationals.

219. With a view to reaching an acceptable formulation, the Chairman suggested adding a sentence reading "Each State shall nominate a person who is a national of that State".

220. The representative of Australia expressed the view that a wording such as "Each State Party may nominate one person from among its own nationals" would be more consistent with international practice and would avoid the problem of more than one national from the same State being elected to the Committee.

221. After some informal consultations, the Working Group adopted paragraph 2 of article 70.

222. The representative of the Netherlands reiterated that sometimes it would be difficult to determine whether a particular country would have to be considered as a State of origin or a State of employment. Very often, a State would come under both categories. Nevertheless, the Netherlands could go along with the text, as proposed.

223. The representative of Canada intervened to support the statements made earlier by the representative of the Netherlands with regard to the reference in paragraph 2 of article 70 to States of origin and States of employment. Though the representative of Canada expressed his desire not to block consensus on that point, he stated that the inclusion of those terms added little and in fact was potentially confusing. He felt that the imprecise definition of those terms would make it difficult to determine under which category a country would fall. As a result, the representative of Canada supported the view that the phrase should have been deleted.

224. The text of paragraph 2 of article 70, as adopted on second reading, reads as follows:

Article 70

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and serve in their personal capacity.

Article 70, paragraph 3

225. At its 8th meeting, on 30 September 1988, the Working Group took up paragraph 3 of article 70 on the basis of paragraph 3 of article 70 as it appeared in document A/C.3/40/WG.I/CRP.1/Rev.1.

226. During the consideration of the paragraph, the Chairman suggested that the word "all" be inserted between the words "a letter" and the words "the States" and that the word "each" after the words "before the date of" be replaced with the word "corresponding". The Working Group agreed to those suggestions and adopted paragraph 3 of article 70 as follows:

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

Paragraph 4

227. At the same meeting the Working Group took up paragraph 4 of article 70 on the basis of paragraph 4 of article 70 contained in document A/C.3/43/WG.I/CRP.5.

228. The representative of the USSR suggested that the word "at" which appears on line 5 of the text, after the word "present" should be replaced with the word "and".

229. The Working Group adopted paragraph 4 with that change as follows:

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties

shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of votes of the States Parties present and voting.

Paragraph 5 (a)

230. At the 8th meeting the Working Group also took up paragraph 5 on the basis of paragraph 5 of article 70 as contained in document A/C.3/43/WG.I/CRP.5.

231. During the consideration of that paragraph, various delegations suggested the inclusion of a phrase to the effect that the members of the Committee should be eligible for re-election if renominated. The sponsors of the proposals contained in document A/C.3/43/WG.1/CRP.5 agreed to accept that suggestion.

232. At the same meeting the Working Group decided to adopt paragraph 5 (a) as amended and to delete the word "six" in the second and fourth lines until it reached an agreement on those figures.

233. At the 14th meeting, on 5 October, the Working Group reached agreement on those figures. Thus the text of paragraph 5 (a) would now read as follows:

"5. (a) The members of the Committee shall serve for a term of four years. They shall be eligible for re-election, if nominated. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties."

Paragraph 5 (b)

234. At its 8th meeting the Working Group began consideration of paragraph 5 (b) of article 70. Since the Working Group had not reached agreement on the number of members referred to in that paragraph, the Working Group decided at that meeting to leave it pending until it reached agreement on those numbers.

235. At its 14th meeting, on 5 October, the Working Group reverted to paragraph 5 (b) of article 70.

236. The Chairman indicated that in order to bring the subparagraph as contained in document A/C.3/43/WG.I/CRP.5 into conformity with paragraph 1 of article 70 as adopted on second reading, the word "six" in line 1 should be replaced with the word "four". He also stated that the words "thirty-fifth ratification or accession" should be replaced with the words "entry into force for the forty-first State Party". He further indicated that the word "three" in line 4 should be changed to "two".

237. The representative of the Federal Republic of Germany proposed that the question of re-election of members be deleted from paragraph 5 (a) as already adopted during the second reading and form the subject of a separate subparagraph.

238. The Vice-Chairman read out a text of the proposed subparagraph (c) as follows:

"The members of the Committee shall be eligible for re-election if renominated."

239. At the same meeting a text for paragraph 5 (b) and (c) was adopted on second reading, as follows:

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties.

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the entry into force for the forty-first State Party. The term of three of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

Article 70, paragraph 6

240. At its 7th and 8th meetings, on 30 September 1988, the Working Group considered paragraph 6 of article 70 on the basis of article 6 contained in the right-hand column of document A/C.3/43/WG.I/CRP.1/Rev.1.

241. During the discussion, the representative of Cape Verde proposed that the words "be invited to" be inserted after the word "shall" because he wanted the nomination to be a right rather than an obligation of States. He suggested that there should be some sort of mechanism for settling a deadlock if the Committee declined to approve a State Party nominee.

242. While the representative of the Federal Republic of Germany endorsed that proposal, the representative of Italy suggested that the text be left as it stood.

243. The representative of the Federal Republic of Germany asked what would happen if the Committee did not approve such a nomination. The representative of Finland, who also raised that question, suggested that perhaps a sentence could be added to the paragraph stating that any State party should be allowed to nominate an expert to fill the vacancy. He also suggested that nominations be submitted by other States parties rather than by the Committee members.

244. The representative of Tunisia placed on record that his delegation, while joining in the consensus on article 70, paragraph 6, found it regrettable that the Working Group had not considered the paragraph in more depth; although relevant, it was too short. In that respect, his delegation believed that the Working Group

should have based itself on the provisions of article 33 of the International Covenant on Civil and Political Rights, which were more explicit.

245. After some discussion, the Working Group adopted paragraph 6 of article 70, as follows:

6. If an expert has ceased to function as a member of the Committee before the expiry of his term, the State Party which nominated the expert shall appoint another expert for the remaining part of the term. The new appointment is subject to the approval of the Committee.

Paragraph 7

246. At its 9th meeting, on 3 October 1988, the Working Group resumed consideration of paragraph 7 of article 70.

247. The Chairman observed that there were three possible methods of financing the Committee. He indicated that either the United Nations or the States parties could be solely responsible or that there could be a division of responsibilities whereby the transport and expenses of members would be covered by States parties and general facilities covered by the United Nations.

248. The representatives of Mexico and India expressed support for the proposal for paragraph 7 as contained in document A/C.3/43/WG.I/CRP.5.

249. The representative of the Federal Republic of Germany referred to his statement during the 6th meeting and said that as the Working Group consisted of experts on migration it should seek the views of bodies expert in financial matters before taking decisions regarding the financial aspects of the Convention. Consequently, he proposed that the Working Group should seek the views of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) before the next session of the Working Group.

250. The representative of Egypt supported the proposal for paragraph 7 as contained in document A/C.3/43/WG.I/CRP.5 and stressed the position of his delegation that all the expenses should be covered by the United Nations regular budget.

251. The representative of the USSR expressed support for the proposal for paragraph 7 contained in document A/C.3/43/WG.I/CRP.5 on the basis that committees financed by States parties had run into financial problems. He therefore preferred to see the Committee financed from the United Nations regular budget.

252. The representative of Australia proposed that States parties be responsible for the finances of the Committee. He indicated that a division of finances whereby States parties paid for the travel and expenses of Committee members and the United Nations financed the provision of general facilities would be disproportionate since the latter formed the majority of total costs. He indicated that with limited resources available from urgent priorities it would not be desirable for the United Nations to have to transfer priorities within its human

rights programme. He suggested that the question of finances be examined by a body more qualified in that field than the Working Group.

253. The representative of the United States expressed the strong view that the Committee should be funded by States parties. He supported the representative of the Federal Republic of Germany in stating that the Working Group might not have enough expertise in these financial matters to make the decision.

254. At the 9th meeting, on 3 October 1988, the Working Group adopted the text for paragraph 7 of article 70, as contained in document A/C.3/43/WG.I/CRP.5.

255. The representatives of the United States and the Federal Republic of Germany indicated that they had joined the consensus in support of paragraph 7 on the basis that the paragraph could not be taken as specifying who would ultimately be responsible for the finances of the Committee.

256. The text of paragraph 7 of article 70 as adopted on second reading reads as follows:

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

Paragraph 8

257. At its 10th meeting, on 3 October 1988, the Working Group continued its consideration of article 70.

258. The representative of Yugoslavia supported the proposal for paragraph 8 contained in document A/C.3/43/WG.I/CRP.5 on the basis that the United Nations should be responsible for the finances of the Committee.

259. The representative of China expressed support for the view that the United Nations should be responsible for the finances of the Committee. He questioned, however, the United Nations ability to bear such a responsibility and agreed with the representative of the Federal Republic of Germany that a body more expert in financial matters should consider the question before the Working Group took a final decision on the issue.

260. The representative of Finland indicated that the adoption of the text for paragraph 8 proposed in document A/C.3/43/WG.I/CRP.5 would not decide the question of who would be responsible for the Committee's finances.

261. The representative of Morocco expressed the view that the United Nations should be responsible for the finances of the Committee in order to ensure the integrity and impartiality of the experts. She took the view that it was up to the Working Group to decide on all questions concerning the Convention and that it would be up to others to implement whatever decision was taken.

262. The representative of the United States disagreed with the representative of Finland, stating that in his view adoption of paragraph 8 as proposed in document A/C.3/43/WG.I/CRP.5 would decide the question of responsibility for funding. He further stated that funding by States parties would not affect the impartiality of experts as the States parties would collectively be responsible for all finances.

263. The representative of Sweden took the view that the United Nations should be responsible for the finances of the proposed Committee. He pointed out that the Charter of the United Nations made it a fundamental task of the United Nations to safeguard human rights. He observed that committees financed wholly or partly by States parties were not always effective due to the fact that many States parties did not honour their financial obligations and that meetings of Committees therefore had to be cancelled. Consequently, the question of financing was not only a budgetary one but also a political one. He supported the representative of Morocco in saying that the Working Group could decide on the issue of finances without referring to any other body.

264. The representative of the Netherlands supported the representative of Sweden in calling for the proposed Committee to be funded by the United Nations. He stated that to have direct funding by States parties would be unfair to poorer States as such a system would affect them more and would in effect amount to a penalty for their ratifying the Convention. This Convention contained many rights which were directly related to the Covenants on human rights and which thus affected the United Nations as a whole. Within the field of human rights one simply could not eat "à la carte". He further stated that the Convention was based on a consensus and that it would not be appropriate to then allow States the option of not funding its costs because they did not wish to ratify it. He also observed that the question of finances was not a strictly budgetary one and that it had some political aspects, and agreed with the representative of Morocco that the Working Group was competent to decide on the issue. He agreed with the representative of Australia that limited resources were available to the United Nations but said that that should not stop it from financing the Convention. He indicated that putting pressure on the United Nations budget might encourage States to give more priority to that part of the budget.

265. The representative of Algeria supported the proposal for paragraph 8 as contained in document A/C.3/43/WG.I/CRP.5 and agreed with the representatives of Morocco and Sweden that questions of finance concerning the Convention must be settled by a strictly political decision and therefore could not be referred to another organ. She considered, moreover, that the Committee to be created should be financed by the United Nations because of the unfortunate experiences of certain supervisory organs run entirely by the States parties.

266. The representative of the Federal Republic of Germany expressed support for the comments by the representative of the United States with regard to the proposal for paragraph 8 as contained in document A/C.3/43/WG.I/CRP.5. He further explained his earlier suggestion as meaning that the Working Group should seek the advice of more expert bodies on the question of finances, particularly that of ACABQ, which did not mean that it would let the question be decided by those bodies.

267. The representative of Australia indicated that accepting the proposal for paragraph 8 as contained in document A/C.3/43/WG.I/CRP.5 would mean accepting United Nations funding for the proposed Committee. He stated that his firm preference was for funding by States parties. He further suggested that the question of finances should not be decided on until other bodies, such as the Third Committee, where more United Nations members were represented, had had the opportunity to discuss it.

268. The representative of Denmark supported the proposal for paragraph 8 as contained in document A/C.3/43/WG.I/CRP.5. He noted that having States parties fund the proposed Committee would not necessarily solve any financial problems which it might face. He referred to the problems in the Committee against Torture and the Committee on the Elimination of Racial Discrimination. He stated that it was up to the Working Group to decide on the funding of the proposed Committee.

269. The representative of Greece supported the proposal for paragraph 8 as contained in document A/C.3/43/WG.I/CRP.5 making the United Nations responsible for funding the proposed Committee.

270. The representative of Italy indicated that adopting paragraph 8 as proposed in document A/C.3/43/WG.I/CRP.5 would not decide the funding of the proposed Committee as the General Assembly would still be free to indicate that the United Nations would only provide funding on the basis of a special fund set up for that purpose. He indicated that the supervisory role of the Committee could not be effectively carried out if the Committee was dependent on the wishes of particular States.

271. The representative of the United States indicated that he could not support the proposal for paragraph 8 as contained in document A/C.3/43/WG.I/CRP.5 because, if it was decided that States parties should be responsible for funding the Committee, it would be up to them to decide on the terms and conditions on which members of the Committee would receive emoluments.

272. After some discussion the Working Group decided to postpone consideration of paragraph 8.

Paragraph 9

273. At the 9th meeting, on 3 October 1988, the Working Group adopted the text for paragraph 9 of article 70 on second reading, as contained in document A/C.3/43/WG.I/CRP.5, reading as follows:

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 71

274. At its 10th meeting, on 3 October 1988, the Working Group considered a text for article 71 contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"Article 71

"1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the position of their law and practice in regard to the rights recognized in the Convention and to other provisions included herein:

"(a) Within one year after the entry into force for the State Party concerned;

"(b) Thereafter every four years.

"2. Reports shall indicate factors and difficulties, if any, affecting the implementation on the present Convention and shall provide information on the characteristics of migration flows in which States Parties to the present Convention are involved."

275. During the consideration of the article, the Working Group had before it a text for article 71 submitted by Finland, Greece, Italy, Morocco, the Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia (A/C.3/43/WG.I/CRP.5).

276. The representative of the USSR questioned why the terms of the introductory phrase in paragraph 1 differed from the terminology used in other human rights instruments. He stated that in his view emphasis should be put on the obligation of States to take specific measures aimed at implementing the Convention. The proposed text might be interpreted as merely an obligation to provide information on the existing situation, which clearly was not enough in the view of his delegation. The representatives of Algeria, Australia, Tunisia, India and Canada also raised that issue.

277. The representative of Tunisia expressed his preference for the text already adopted in article 40 of the International Covenant on Civil and Political Rights.

278. The representative of Canada proposed that paragraph 1 (a) be changed to read "two years" instead of "one year" and that paragraph 1 (b) be changed to read "five years" instead of "four years". He also proposed that a sentence be added to paragraph 1 as contained in A/C.3/43/WG.I/CRP.5 stating that basic information need not be repeated in succeeding reports after the initial one. The proposal was endorsed by the representatives of Australia, the Federal Republic of Germany and the United States.

279. The representative of the Netherlands suggested that paragraph 1 (b) be changed to say "Thereafter as the Committee requests", since that would make it possible for the Committee to introduce a flexible reporting system.

280. The representatives of Finland and Sweden placed emphasis on the word "provisions" being retained in paragraph 1 on the basis that the Convention dealt with rights as well as obligations.

281. After some discussion the Working Group decided to take up consideration of article 71 in informal consultations.

282. At its 13th meeting, on 5 October 1988, the Working Group resumed consideration of a text for article 71. The Chairman read out a text for the article which had emerged as a result of informal consultations, reading as follows:

"Article 71

"1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the Convention:

"(a) Within one year after the entry into force of the Convention for the State Party concerned;

"(b) Thereafter every five years and whenever the Committee so requests.

"2. Reports mad under this article shall also indicate factors and difficulties, if any, affecting the implementation of the present Convention and shall include information on the characteristics of migration flows in which the State Party is concerned is involved.

"3. The Committee shall decide any further guidelines applicable to the content of the reports."

283. The representative of the Federal Republic of Germany stated that in principle he supported the wording of article 71 as read out by the Chairman. He stated, however, that if article 89 as adopted on first reading was adopted on second reading, a sentence should be added to paragraph 1 of article 71 allowing States parties to exclude from the reports issues concerning parts or articles of the Convention with respect to which they had made reservations upon ratification.

284. The representative of the United States indicated that he supported the consensus on this article. He also proposed that the comma after the word "Committee" in the introductory phrase to paragraph 1 be deleted.

285. At the same meeting the Working Group adopted article 71 on second reading, as follows:

Article 71

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports made under this article shall also indicate factors and difficulties, if any, affecting the implementation of the present Convention and shall include information on the characteristics of migration flows in which the State Party is concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

Article 72

286. The Working Group considered article 72 at its 12th meeting, on 4 October, and at its 13th and 14th meetings, on 5 October 1988, on the basis of the following text proposed by Finland, Greece, Italy, Morocco, the Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia (A/C.3/43/WG.I/CRP.5), reading as follows:

"Article 72

"1. The Committee shall examine the reports submitted by each State Party to the present Convention and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with this article. The Committee may request supplementary information from States Parties when considering these reports. States Parties may be invited to participate in meetings of the Committee.

"2. Not later than ninety days before the opening of each regular session of the Committee, the Secretary-General of the United Nations shall transmit to the Director-General of the International Labour Office all available information relevant to the application of this Convention, including the reports and commentaries from States Parties referred to in paragraph 1 of this article.

"3. The Committee may invite the specialized agencies and other organs of the United Nations, as well as intergovernmental organizations and other concerned bodies, to submit, for consideration by the Committee, written information on such matters dealt with in Convention as fall within their field of competence.

"4. (a) The International Labour Office shall be invited by the Committee to nominate two representatives to participate, without the right to vote, in the deliberations of the Committee.

"(b) The Committee may also invite representatives of other specialized agencies and other organs of the United Nations, as well as of intergovernmental organizations, to participate, in a consultative capacity, on the consideration by the Committee of such matters as fall within their field of competence.

"5. The Committee shall present annually to the General Assembly of the United Nations, for its information, a report summarizing its comments on the

reports of States Parties and the observations, if any, of the latter thereon. The Committee may include such general recommendations and suggestions as it deems appropriate arising out of the examination of the reports of States Parties.

"6. The Secretary-General of the United Nations shall transmit the reports of the Committee to the States Parties to this Convention, to the Economic and Social Council, to the Commission on Human Rights of the United Nations, to the Director-General of the International Labour Office and to other relevant organizations."

287. The Chairman, revising several proposals made during informal consultations on article 72, referred to paragraphs 4 and 6. In paragraph 4 (a) he said there was a proposal to replace the words "without the right to vote" with the words "in a consultative capacity"; to add at the end of the paragraph the words "when matters falling under the authority of the ILO are being considered"; and to delete the word "two" before the word "representatives". In paragraph 6 there was a proposal to add a reference to non-governmental organizations so that reports of the Committee might be transmitted to them as well.

288. With reference to paragraph 1 of article 72, the Working Group held a discussion as to whether States should be invited to be present at the deliberations of the Committee and under what conditions. The representatives of Algeria, Australia, the Byelorussian SSR, China, Denmark, Egypt, the Federal Republic of Germany, India, Sweden, Tunisia, the USSR and Yugoslavia underlined that it was an established practice followed by human rights treaty bodies to invite representatives of States parties to participate at meetings when their respective reports were being examined; the representatives of States parties present the reports, reply to questions and provide clarification requested by the treaty bodies; in fact, this had proven to forge a fruitful dialogue between States and the supervisory bodies established under human rights conventions.

289. Some of the delegations supporting this view felt that this established practice could be clearly stated in the Convention. In that connection, the representative of Mexico, supported by the representatives of Egypt and Colombia, proposed the following addition to paragraph 1 of article 72:

"States Parties shall be entitled to participate in the meetings of the Committee in which their respective reports are being considered, with the modalities to be established by the rules of procedure of the Committee itself".

290. Other representatives, while favouring the presence of representatives of States parties at meetings of the Committee when their respective reports were examined, namely those of the USSR, Australia, Yugoslavia and Sweden, were, however, of the opinion that it was not necessary for the Convention to make specific provision in that regard, since this had been the established practice even in cases where in other human rights instruments did not explicitly stipulate it. They pointed out that the Convention would be entering into details which could be dealt with by the Committee itself in its rules of procedure, as for

example had been the case with the Committee on the Elimination of Racial Discrimination established under the Convention on the Elimination of All Forms of Racial Discrimination. The rules of procedure could also provide for private meetings of the Committee when it would discuss possible recommendations to the State parties the report of which had been considered.

291. The representative of Denmark suggested the addition at the end of paragraph 1 of article 72 of the phrase:

"States Parties may participate in meetings of the Committee".

292. The representative of India suggested an amendment to the Danish proposal, i.e. the addition of the phrase "according to the rules of procedure to be established by the Committee". The representative of China suggested the phrase "States Parties shall be invited to the meetings of the Committee".

293. The representative of Algeria, whose position was to allow the representatives of States parties to participate in meetings of the Committee during the presentation of their reports, considered that it would be wise to include in the Convention a provision on the participation of States parties in meetings of the Committee during the consideration of their respective reports since the practice was well established in other organs. However, the representative of Algeria stressed the need for some flexibility and the need to refrain from entering into details because that would impinge upon the competence of the experts on the Committee who would, in any case, establish the modalities in their rules of procedure.

294. The representative of Italy, supported by the representative of Greece, pointed out that article 72 as proposed in document A/C.3/43/WG.I/CRP.5 gave full opportunity to States parties to have a dialogue with the Committee, including the possibility of participating at its meetings. If States parties were given the right to participate on all occasions the Committee's work might be hampered.

295. The Chairman suggested the following formulation as a possible compromise:

"1. States Parties may be invited to participate as observers at the meetings of the Committee. They shall have the right to be present when their reports are examined".

296. The representative of the Federal Republic of Germany suggested that, given the established practice of human rights treaty bodies, reference to the participation of States parties could be made in article 72 and an interpretative statement included in the report indicating that the Working Group appeared to agree that there was obviously a possibility, not an obligation, for States parties to participate when their report was examined.

297. The Working Group decided to postpone further consideration of paragraph 1 of article 72 to a later date and hold informal consultations in that regard.

298. The Working Group then referred to paragraph 2 of article 72. The

representative of Australia said that provision should be made to transmit documentation not only to ILO but also to other agencies in matters of their interest to them. He proposed a separate paragraph 2 bis, which would read as follows:

"The Secretary-General may also, after consultation with the Committee, transmit to other specialized agencies copies of such parts of these reports and comments as may fall within their field of competence".

299. The representative of Egypt, referring to the 90-day deadline given to the Secretary-General for transmission of information to ILO, felt that it would be impractical and wondered what the legal impact would be on the Committee's work if such information was only available and thus transmitted later.

300. The representative of the United States supported the mandatory transmittal of State party reports to ILO, in light of that Organization's recognized expertise and constitutional responsibility for migrant workers. The United States also recommended that the Committee be required to consider any input received from ILO. He therefore proposed the following addition to paragraph 2:

"The Committee shall consider in its deliberations any written comments on these materials that ILO may provide regarding such matters as fall within the sphere of competence of ILO".

301. The representative of Canada expressed his agreement with the proposal.

302. The representative of the USSR said that article 72 should establish clearly that ILO had to provide assistance to the Committee and that information was sent for that purpose. In the text as proposed in document A/C.3/43/WG.I/CRP.5 it was unclear what "all available information" was supposed to mean and thus he preferred the formulation of paragraph 1 bis (b) which had emerged after the first reading (A/C.3/39/WG.I/WP.1). The proposal of the United States might be interpreted as transforming the ILO representatives into experts *ex officio* of the Committee; if the experts of the Committee had to take into account the opinion of ILO, that might undermine their independence. The representative of Egypt shared the above concerns and pointed out that the representatives of ILO would have expertise which they could provide to the Committee as advisers.

303. Referring to the expression "all available information" in paragraph 2, the representatives of Italy and the Netherlands interpreted it as meaning the reports of States parties which the Secretary-General should send to ILO. The representative of the Netherlands, while underlining the importance of the role of ILO, by possibly doing much of the preparatory work of the Committee, stated that the proposal of the United States had some disadvantages, namely that it did not take into account that ILO was not competent to advise on all articles of the Convention; thus he preferred reference to ILO in paragraph 3, thereby emphasizing the necessity of maintaining a clear correspondence between the manner in which the preparatory work would be done by ILO and the way it would be done by the Secretary-General of the United Nations in those areas where ILO would not be competent.

304. Regarding paragraph 4 of article 72, the representative of Finland said he could not accept the phrase "when matters coming within the authority of ILO are being considered". The representative of Greece said the paragraph should specify that two representatives of ILO should participate at the Committee's meetings.

305. After some further discussion the Working Group decided to revert to informal consultations.

306. At its 13th meeting, on 5 October 1988, the Working Group resumed consideration of article 72.

307. The representative of the Federal Republic of Germany suggested, in case the proposal by the representative of the United States regarding paragraph 2 was not adopted, that paragraph 3 should refer explicitly to ILO. He also questioned whether "other concerned bodies" in paragraph 3 could be taken to cover non-governmental organizations.

308. The representative of Mexico said that, although she would not oppose the consensus reached by the Group on the point, she wished to reiterate the importance which her delegation attached to the inclusion in the future Committee's rules of procedure of a rule establishing the right of States to be present during consideration of their respective reports, as she had proposed for article 72.

309. The representative of Canada stated that the proposal by the representative of the United States regarding paragraph 2 was worth considering but that it would not be necessary to amend paragraph 2 if the ideas contained in that proposal were reflected in paragraph 3. He agreed with the representative of Cape Verde that paragraph 3 should refer explicitly to non-governmental organizations. The representative of Sweden agreed with the position of the representative of Canada.

310. The representative of the USSR expressed that he had no real problems with paragraph 3 as contained in document A/C.3/43/WG.I/CRP.5. He stated that he understood the phrase "other concerned bodies" as covering non-governmental organizations. He also stated that he would not object to a direct mention of the non-governmental organizations.

311. The representative of the Netherlands suggested that he was basically satisfied with paragraph 3 and proposed that an explicit reference there to ILO would mean that the United States proposal regarding paragraph 2 would be unnecessary.

312. The representative of the United States took the view that ILO should have the right to provide information to the Committee and wanted it made clear that the Committee should consider such input. He understood "other concerned bodies" as covering non-governmental organizations.

313. The representative of Morocco agreed with the representative of the Netherlands in being satisfied with the text of paragraph 3 as contained in document A/C.3/43/WG.I/CRP.5 but with a little clarification.

314. The representative of Italy read out a proposal for paragraphs 2 and 3, as follows:

"2. Not later than days before the opening of each regular session of the Committee, the Secretary-General of the United Nations shall transmit to the Director-General of the International Labour Office copy of the reports submitted by States Parties concerned and other available information in order to enable it to assist the Committee with all comments and materials that the Office may provide regarding those matters dealt with by the Convention which fall within the sphere of competence of the International Labour Office.

"3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations and other concerned bodies, copies of such parts of these reports as may fall within their competence, and invite them to submit for consideration by the Committee written information on such matters."

315. The representative of the USSR stated with reference to the proposal by the representative of Italy that the relationship of the International Labour Organisation with the Committee and that of other United Nations organizations with the Committee should be dealt with in separate paragraphs.

316. The representative of Morocco supported the text proposed by the delegate of Italy but raised two objections: the first, on the word "eventually", which should be deleted; and the second, on the reference to the transmission to "other concerned bodies" of copies of the reports submitted by States. She objected to that reference. However in order to enable non-governmental organizations to send their information to the Committee, she proposed a new paragraph which could, as worded, meet the objections of the Federal Republic of Germany. The paragraph read as follows:

"The Secretary-General shall transmit to the Committee any other information relating to the Convention which it receives".

317. The representative of the Netherlands stated, with reference to the Italian proposal, that the initiative should not be taken by the Secretary-General but rather that the words "the Committee may, through" should be inserted before the words "the Secretary-General". The representative of Denmark supported that proposal.

318. After further discussion the Working Group decided to take up consideration of paragraph 3 in informal consultations.

319. At the same meeting the Working Group resumed consideration of a text for paragraph 4 of article 72. The Chairman read out a text for the paragraph as follows:

"The International Labour Organisation shall be invited by the Committee to nominate representatives in a consultative capacity to participate in the meetings".

320. The representative of Greece stated that he wanted the International Labour Organisation to have a substantive role to play in the proceedings of the Committee. He proposed that, rather than the deletion of "two" as in the proposal for paragraph 4 in document A/C.3/43/WG.I/CRP.5, he wished to see the words "two or more" or "no less than two" inserted before the word "representatives".

321. After further discussion the Working Group decided to take up consideration of paragraph 4 in informal consultations.

322. At its 14th meeting, on 5 October 1988, the Working Group resumed consideration of a text for article 72. The Chairman read out a text for paragraphs 2, 3, 4 and 5 of that article which had emerged as a result of informal consultations, reading as follows:

"2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports in order to enable the Office to assist the Committee with the expertise it may provide regarding those matters dealt with by the Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

"3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

"4. The Committee may invite the specialized agencies and other organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the Convention as falling within their scope of activities.

"5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee."

323. The representative of the Federal Republic of Germany stated that, with respect to the proposal for paragraph 4 as read out by the Chairman, he would be unable to join a consensus in support of it because he would have preferred a version of the paragraph explicitly excluding non-governmental organizations as a source of information. He was of that opinion notwithstanding the fact that some of those organizations, particularly employers' and workers' organizations, could provide valuable and reliable information, because information provided by certain non-governmental organizations, particularly those whose activities centred on the international migration of workers, were often inspired more by their partisan alignment than by their competence and objectivity and it was difficult to distinguish between such organizations. He however indicated that he would not block a consensus and would be satisfied to have his views reflected in the report.

324. The representative of Sweden stated that although it was clear that the notion "other concerned bodies" included non-governmental organizations, his delegation favoured an explicit mention of these organizations in paragraph 4. He stressed the important work that non-governmental organizations all over the world were carrying out in the field of human rights and thought that this should be recognized in the Convention by including a reference to them. He indicated that it could be most useful for the Committee to be able to invite non-governmental organizations to provide it with information on such matters as the Committee would deem desirable.

325. The representative of the Netherlands, although supporting the remarks made by Sweden, stated that his Government was very satisfied with the role non-governmental organizations played in the field of human rights. Their information on human rights was of great value. The fact that, according to one representative, sometimes allegations may have been made which were not correct, should not prompt the Working Group to take a negative stand on the role of non-governmental organizations in this respect. The representative of Denmark supported that observation.

326. The representative of Greece observed with reference to the proposal for paragraph 5 read out by the Chairman that he understood the words "participate ... in the meetings" as meaning that the representatives of the International Labour Office would have an active role in the meetings and not just sit in an observer capacity.

327. The representative of Yugoslavia, with reference to the proposal for paragraph 5, supported the text as it had emerged from informal consultations. She said that ILO should play an important role in expert analysis of the reports of the States, but that its representatives could not have equal status with the experts of member States.

328. The representative of the United States proposed that the words "expertise it may" in the proposal for paragraph 2 read out by the Chairman, be changed to read "expertise the Office may". He also proposed with reference to the proposal for paragraph 4 that the words "their scope of activities" be changed to read "the scope of their activities".

329. At the same meeting, the Working Group adopted a text for paragraphs 2, 3, 4 and 5 of article 72.

330. With regard to paragraph 4 the Working Group understood the words "other concerned bodies" to include non-governmental organizations in consultative status with the Economic and Social Council. With regard to paragraph 5 the Working Group interpreted the words "in a consultative capacity" to have the same meaning as the words "without the right to vote". The representatives of Greece, the United States and Norway wished to have it on record that although they did not block a consensus they would have preferred that the Working Group make the interpretation clear by adopting that language in paragraph 5 rather than relegating the interpretation to the report.

331. The text of paragraphs 2, 3, 4 and 5 of article 72 as adopted during the second reading reads as follows:

2. The Secretary-General of the United Nations shall in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and other organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

332. At the same meeting the Working Group considered a text for paragraph 1 of article 72.

333. The Chairman read out a proposal by the representative of Morocco that the word "submitted" in line 1 of paragraph 1 as contained in document A/C.3/43/WG.I/CRP.5 be replaced by the words "which will be presented". She had further proposed that the last sentence be deleted.

334. The representative of the USSR disagreed with the proposal by the representative of Morocco to change the words "submitted" to "which will be presented" since the former constituted usual United Nations language. He however agreed with the proposal that the last sentence be deleted.

335. The representative of Egypt stated that he would prefer to have the article stipulate clearly the right of States to participate. However, he could accept the formulation as contained in document A/C.3/43/WG.I/CRP.5.

336. The representative of Yugoslavia proposed the deletion of the last sentence. However, she stated that she could go along with the wording used in the rules of procedure of the Committee on the Elimination of Racial Discrimination. The representatives of Australia and India supported that view. The representatives of the Federal Republic of Germany and Sweden proposed the deletion of the last sentence.

337. The representative of the Federal Republic of Germany proposed that, if the sentence was to remain as it stood, the report should point out that, in the view of the Working Group, participation in the work of the Committee should conform to established practice in the United Nations system.

338. The representative of Italy expressed support for paragraph 1 as contained in document A/C.3/43/WG.I/CRP.5 on the basis that it anticipated all situations. He stated that the last sentence was merely to allow the Committee to invite States parties to assist it if ever it faced any problems. He felt that the issue of entitlement to participation was covered by the second sentence as "submit to the Committee" should be taken to mean orally or in writing.

339. The representative of Denmark stated that his delegation always worked on the basis of a spirit of compromise. However, it would only be able to join in a consensus on that point if it was explicitly stated in the report that it was the clear understanding of the Working Group that the Committee would follow the normal practice within the United Nations system so that it would be ensured that a State was entitled to participate in a meeting when the Committee considered the report of that State.

340. At the same meeting the Working Group adopted a text for paragraph 1 of article 72.

341. The Working Group noted that it was the practice within the United Nations system for States to participate in the proceedings of a Committee when a report concerning them was being examined. Consensus on paragraph 1 was achieved on the understanding that the practice would be followed by the Committee under the Convention. Furthermore, the Working Group noted that no other human rights instrument contained a provision concerning the rights of States to be present in meetings of supervisory committees. However, the last sentence of paragraph 1 of article 72 as contained in document A/C.3/43/WG.I/CRP.5 could not be found in any human rights instrument, apart from meetings deriving from procedures relating to settlement of disputes.

342. The text of paragraph 1 of article 72, as adopted during the second reading, reads as follows:

Article 72

1. The Committee shall examine the reports submitted by each State Party to the present Convention and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with this article. The Committee may request supplementary information from States Parties when considering these reports.

343. At its 16th meeting, on 7 October 1988, the Working Group adopted the present report.

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

PART VI

Promotion of sound, equitable and humane conditions in connection with
lawful international migration of workers and their families

Article 63

1. Without prejudice to article ___ the States parties concerned shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions with respect to international migration of migrant workers and members of their families.

2. In this respect due regard shall be paid not only to labour needs and resources, but also to the social, economic and cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned.

Article 64

1. The States Parties to the present Convention shall maintain appropriate services to deal with questions concerning international migration of workers and members of their families. Their functions shall include, inter alia:

(a) The formulation and implementation of policies regarding such migration;

(b) Exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in such migration;

(c) The provision of appropriate information, particularly to employers, workers, and their organizations on policies, laws and regulations relating to migration and employment, on agreements concluded with other States concerning migration and on other relevant matters;

(d) The provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit and return as well as on conditions of work and life in the State of employment and on customs, currency, tax and other relevant laws and regulations;

2. The States Parties to the present Convention shall facilitate as appropriate the provision of adequate consular and other services which are necessary to meet the social, cultural and other needs of migrant workers and their families.

Article 65

1. Subject to the following paragraph, the right to undertake operations with a view to the recruitment of workers for employment in another State shall be restricted to:

(a) Public services or bodies of the State in which such operations take place;

(b) Public services or bodies of the State of employment on the basis of agreement between the States concerned;

(c) A body established by virtue of a bilateral or multilateral agreement.

2. Subject to any authorization, approval and supervision by the public authorities of the States Parties concerned as may be established pursuant to national laws, regulations or practices of those States, agencies, prospective employers or persons acting on their behalf may also be permitted to undertake the said operations.

Article 66

1. States Parties concerned shall co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation.

2. Concerning migrant workers and members of their families in a regular situation, States Parties concerned shall co-operate as appropriate, on terms agreed upon by those States, with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin.

Article 67

1. The States Parties to the present Convention, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons or entities who organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities who use violence, threats or intimidation against migrant workers or members of their family in an irregular situation.

2. States of employment shall take all adequate measures that might be effective in eliminating employment in their territory of migrant workers in an irregular situation, including sanctions on persons or entities employing such workers wherever appropriate. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

Article 68

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

Article 69

The States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

Article 69 bis

The States Parties shall facilitate, wherever necessary, the repatriation to the State of origin of the bodies of the deceased migrant workers or members of their families.

PART VII (formerly PART VI)

Application of the Convention

Article 70

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Their Families (hereinafter referred to as "the Committee").

(b) The Committee shall consist, at the time of entry into force of the Convention, of ten and, after the entry into force of the Convention for the

forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties.

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the entry into force for the forty-first State Party. The term of three of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If an expert has ceased to function as a member of the Committee before the expiry of his term, the State Party which nominated the expert shall appoint another expert for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. ...

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 71

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports made under this article shall also indicate factors and difficulties, if any, affecting the implementation of the present Convention and shall include information on the characteristics of migration flows in which the State Party is concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

Article 72

1. The Committee shall examine the reports submitted by each State Party to the present Convention and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with this article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and other organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.
