



General Assembly

Distr.
GENERAL

A/C.3/39/4
11 October 1984

ORIGINAL: ENGLISH

Thirty-ninth session
THIRD COMMITTEE
Working Group I
Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Draft report of the open-ended Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

INTRODUCTION

1. The Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families, open to all Member States, was established under General Assembly resolution 34/172 of 17 December 1979.
2. By its resolution 38/86 of 16 December 1983, the General Assembly, inter alia, took note of the previous reports 1/ of the Working Group and expressed its satisfaction with the substantial progress that the Working Group had so far made in the accomplishment of its mandate; 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 1984 of the Economic and Social Council; and invited the Secretary-General to transmit to Governments the report of the Working Group so as to allow the members of the Group to continue their task during the inter-sessional meeting to be held in the spring of 1984, as well as to transmit the results obtained at that meeting so that the General Assembly might consider them during its thirty-ninth session. The General Assembly also invited the Secretary-General to transmit the above-mentioned documents to the competent organs of the United Nations system and to international organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group. It also decided that the Working Group should meet during the thirty-ninth session of

the General Assembly, preferably at the beginning of the session, to continue and, if possible, to complete the elaboration of an international convention on the protection of the rights of all migrant workers and their families.

3. In accordance with paragraphs 3 and 4 of General Assembly resolution 38/86, the Secretary-General has transmitted the results obtained during the thirty-eighth session of the General Assembly and the spring session of 1984 to Governments, competent organizations of the United Nations system and international organizations concerned.

4. By its resolution 1984/41 of 24 May 1984, the Economic and Social Council, inter alia, welcomed the progress made by the Working Group and expressed the hope that substantial progress would be made by the Working Group during its two subsequent meetings to be held in 1984, in accordance with General Assembly resolution 38/86 of 16 December 1983.

5. The Working Group has held the following sessions at United Nations Headquarters: (a) the first session during the thirty-fifth session of the General Assembly, from 8 October to 19 November 1980; (b) a first inter-sessional meeting from 11 to 22 May 1981; (c) a second session during the thirty-sixth session of the General 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 General 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 General Assembly from 27 September to 6 October 1983; (h) a fourth inter-sessional meeting in the spring of 1984 from 29 May to 8 June 1984; and (i) a fifth session during the thirty-ninth session of the General Assembly from 26 September to 5 October 1984.

6. In pursuance of General Assembly resolution 38/86, the Working Group met at United Nations Headquarters at the beginning of the thirty-ninth session of the General Assembly, from 26 September to 5 October 1984 under the chairmanship of Mr. Antonio González de León. It held 11 meetings with the participation of delegations from all regions. Observers for the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO) and the Economic Commission for Africa (ECA) also attended the meetings.

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

(a) Report of the open-ended Working Group during the thirty-ninth session of the General Assembly (A/C.3/39/4);

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

(c) Text of the preamble and articles of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families to which the Working Group provisionally agreed during the first reading in previous sessions (A/C.3/39/WG.1/CRP.1/Rev.1);

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(d) Texts of the pending articles of the draft International Convention on the Protection of the Rights of All Migrant Workers and Their Families, together with the proposals relating thereto (A/C.3/39/WG.1/CRP.3);

(e) Working paper submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden concerning the definitions of "migrant workers" (A/C.3/39/WG.1/CRP.4);

(f) Compilation of proposals made by members of the Working Group (A/C.3/36/WG.1/WP.1).

8. For reference, the following documents were also available to the Working Group:

(a) Report of the Chairman of the open-ended Working Group (A/C.3/35/13);

(b) Letter dated 25 May 1981 from the Chairman of the open-ended Working Group on the elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families to the Secretary-General (A/36/378 and annexes I to XIX);

(c) Communications submitted by the Governments of Denmark (on behalf of the Nordic countries), Italy, the Netherlands, Spain and the United States, relating to the draft report of the Chairman of the Working Group on its inter-sessional meetings (A/36/383);

(d) Further suggestions submitted by Finland, Norway, Portugal, Spain and Sweden for parts III, IV and V of the Convention (A/C.3/36/WG.1/CRP.1/Add.3 and 4);

(e) Report of the open-ended Working Group to the Third Committee of the General Assembly at its thirty-sixth session (A/C.3/36/10);

(f) Report of the open-ended Working Group on its inter-sessional meeting from 10 to 21 May 1982 (A/C.3/37/1);

(g) Report of the open-ended Working Group during the thirty-seventh session of the General Assembly (A/C.3/37/7 and Corr.1 and 2 (English only));

(h) Suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden: revised proposals for articles 2 and 4 and part IV of the draft International Convention (A/C.3/38/WG.1/CRP.5);

(i) Suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden relating to proposals presented in document A/C.3/35/WG.1/CRP.15 and Corr.1 and 2 (A/C.3/38/WG.1/CRP.6);

(j) Further suggestions submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden relating to proposals presented in part VI of the draft International Convention appended to the report of the Working Group (A/C.3/38/5).

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

9. The present report contains exclusively the results of discussion in the Working Group at its meeting during the thirty-ninth session of the General Assembly from 25 September to 5 October 1984 regarding specific provisions of the Convention and does not contain statements of a general nature made during the debate. In the texts set forth throughout this report which were considered by the Working Group, only the language which has been provisionally agreed upon 2/ at first reading is that outside square brackets. Square brackets indicate that the Working Group has not reached provisional agreement on the proposed language, which therefore remains only a proposal.

10. It may be recalled that, at its meetings held during the thirty-sixth session of the General Assembly, the Working Group had concluded its first reading of the preamble of the draft Convention. At its inter-sessional meeting in May 1982, the Working Group concluded its first reading of part II of the draft Convention on the understanding that the text which was provisionally agreed upon would be further examined at a later stage in order to harmonize it with the rest of the Convention and to adopt a text without brackets. At the same session the Working Group also concluded its preliminary consideration of part I of the Convention and agreed to postpone further consideration of articles 2 and 4, which were still pending, to a later stage. At its spring inter-sessional meeting of 1983, the Working Group concluded consideration of part III with the exception of article 55 which the Group agreed to take up together with part IV dealing with particular categories of migrant workers and members of their families, which the Group decided to consider at a later stage. During the thirty-eighth session of the General Assembly, the Group concluded part V on the promotion of sound, equitable and humane conditions in connection with lawful international migration of workers and their families and part VII on general provisions. The text of the preamble, part I on scope and definitions (arts. 1, 3, 5 and 6), part II on the fundamental human rights of migrant workers and members of their families, part III on additional rights of all migrant workers and members of their families in a regular situation (arts. 35-54 and art. 56), part V (arts. 62-68) and part VII appeared in document A/C.3/39/WG.1/CRP.1. At the spring 1984 session, the Working Group concluded its first reading of part VIII on final provisions, part VI on the application of the Convention as well as paragraph 1 of article 2.

Article 2 (paras. 2 and 3)

11. Having dealt with paragraph 1 of article 2 during its spring session (see document A/C.3/39/1), at its 1st, 2nd, 6th and 7th meetings from 25 to 28 September, the Working Group resumed consideration of article 2, pending consideration of paragraphs 2 and 3, on the basis of the new proposals for article 2 submitted by the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden contained in document A/C.3/38/WG.1/CRP.5 and reproduced in document A/C.3/39/WG.1/CRP.3, together with proposals submitted by the delegations of Denmark and Mexico relating to articles which were before the Group at its spring session of 1984. The text of article 2 (2) and (3) reads as follows:

/...

"Article 2

...

"2. For the purpose of this Convention:

"(a) Frontier workers shall be considered migrant workers when they engage in work in one State but retain their permanent residence in a neighbouring State to which they normally return every day;

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

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

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

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

"3. The term 'migrant worker' excludes:

"(a) Persons employed by international organizations and agencies and persons employed by a State outside its territory whose admission and status are regulated by general international law or by specific international agreements or conventions;

"(b) Persons employed on behalf of a State outside its territory for the execution of programmes of co-operation for development agreed with the receiving State and whose admission and status are regulated by specific international agreements or conventions."

12. The representative of Denmark proposed that the provisions of article 2 should be in line with article 1 of the European Convention on the Legal Status of Migrant Workers. The text of article 1, paragraph 2 of that Convention reads as follows:

"Article 1

"Definition

...

/...

"2. This Convention shall not apply to:

"a. frontier workers;

"b. artists, other entertainers and sportsmen engaged for a short period and members of a liberal profession;

"c. seamen;

"d. persons undergoing training;

"e. seasonal workers; seasonal migrant workers are those who, being nationals of a Contracting Party, are employed on the territory of another Contracting Party in an activity dependent on the rhythm of the seasons, on the basis of a contract for a specified period or for specified employment;

"f. workers, who are nationals of a Contracting Party, carrying out specific work in the territory of another Contracting Party on behalf of an undertaking having its registered office outside the territory of that Contracting Party."

13. The representative of Mexico proposed the addition of new subparagraphs (c), (d) and (e) to paragraph 3 of article 2, reading as follows:

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

"(d) Persons who do not receive their main earnings in the State of employment [receiving State];

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

14. During the consideration of the article, the representative of Greece introduced a working paper submitted by the co-sponsors (Finland, Greece, Italy, Norway, Portugal, Spain and Sweden) relating to the definition of migrant workers and contained in document A/C.3/39/WG.1/CRP.4.

15. With reference to the proposal made by the representative of Denmark and in the course of the discussion, the representative of Yugoslavia, supported by the delegations of Greece, Spain, Sweden and Finland, reiterated that the definition of the concept of migrant workers as stipulated in the European Convention on the Legal Status of Migrant Workers was too restrictive and therefore unacceptable to them as the mandate of the Working Group was to draft a global convention for the protection of all migrant workers and members of their families. In that connection, the representative of Italy, while pointing out the restrictive nature of the definitions in the European Convention, suggested that the Working Group should base its work on the text for article 2, paragraphs 2 and 3 submitted by the co-sponsors, since the mandate of the Working Group was to elaborate a Convention

for the protection of all migrant workers and members of their families. The representative of Denmark insisted on maintaining her proposal. In that respect, the representative of Sweden stressed that the purpose of the definitions as contained in the proposal by the co-sponsors was to fill the gaps in existing instruments.

16. Turning to subparagraph 2 (a) of the article, the representative of Yugoslavia expressed his difficulties over the phrase "to which they normally return every day". The representative of the Byelorussian Soviet Socialist Republic pointed out that the term "normally" could not be interpreted to mean every day. In accommodating the concern of certain delegations in subparagraph (a), the representative of Greece proposed adding the words "or at least once a week" at the end of the subparagraph. The Working Group accepted the proposal.

17. As concerns subparagraph 2 (b), the representative of the United States proposed adding the words "in a State of which they are not nationals" after the words "engaged in work". The representative of the Union of Soviet Socialist Republics expressed his support in principle for article (2), paragraphs 2 and 3.

18. Regarding subparagraphs 3 (a) and (b) of the article, the representative of the Federal Republic of Germany proposed adding "performing official duties" after the word "Persons" in both subparagraphs. The representatives of Finland, France and Italy expressed their concern over such a proposal, pointing out that they might be workers employed by international organizations who were not necessarily performing official duties. They stressed that, in making a distinction in the categories of persons employed by international organizations care should be taken not to put certain categories of workers in a disadvantaged position. Upon the suggestion of the Chairman, the Working Group agreed to keep the proposal by the representative of the Federal Republic of Germany in brackets.

19. Turning to the proposal submitted by the delegation of Mexico, the Chairman suggested revising proposed subparagraph 3 (d) to read "Persons whose main earnings do not originate from the State of employment [receiving State]." The representatives of Sweden and other delegations expressed their difficulties over subparagraph 3 (c) of that proposal. The representative of Italy stressed that the exclusion contained in subparagraphs 3 (c) and (d) might adversely affect the interest of certain categories of migrant workers for whom arrangements were made to establish a contract before leaving their State of origin. With regard to the exclusions in proposed subparagraph 3 (e), the representative of Yugoslavia emphasized that an exception should be made for cases when the employees were members of the family of the employer. The representative of France placed on record his reservation regarding subparagraph (e) and suggested keeping it in brackets. While expressing his concern over the proposal, the representative of Finland stated that the provisions of article 2 should be read in conjunction with part IV of the Convention and suggested putting proposed subparagraph 3 (c) in brackets. The representative of Greece placed his reservation about subparagraph (c) on record, stating that he objected to the subparagraph because it excluded from protection a large number of workers who signed a contract of employment to work abroad while still in their State of origin.

20. Following the consultations held among the Chairman, the co-sponsors and interested delegations, the representative of Denmark agreed not to maintain her proposal. She stated that, in view of her national legislation, States should be given the possibility of making exceptions as regards certain categories of migrant workers. She stated that she would return to the question at a later stage in the work of the Working Group in connection with the provisions relating to the final clauses (see para. 79 below).

21. The representative of India placed his reservation on record that students, trainees, refugees and stateless persons should be excluded from the concept of migrant workers.

22. During the discussion at several meetings of the proposals for article 55 on project-tied workers, the Working Group decided to reflect those proposals both in article 2 and in part IV of the Convention (concerning this question in relation to part IV, see paras. 51-65 below). In this connection the representative of the United States also proposed replacing the term "shall be considered" by the word "are" in article 2, paragraph (2) subparagraphs (a), (b), (c), (d), (e), and (f). As far as article 2, on definitions, was concerned, after a lengthy debate and informal consultations the Working Group decided to adopt as subparagraph (f) of paragraph 2 in article 2, the following definition of project-tied workers:

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

23. The Working Group took up the proposal of the delegation of India to exclude refugees and stateless persons, at its 7th meeting on 28 September 1984. Although recognizing that both those categories of persons were already covered by specific international instruments, several delegations expressed their doubts about the advisability of excluding them from the benefits of the Convention on migrant workers. The representative of Canada also observed that even if refugees were not to be treated as migrant workers in countries of first asylum, they should at the very least fall under the Convention if they move to a country of settlement. In view of the complexity of the question and the delicate relationship that might exist between the Convention on migrant workers and the existing instruments on refugees and stateless persons, the Working Group decided to retain in brackets the Indian proposal, in order to consider its full implications at the second reading.

24. At its 7th meeting on 28 September, the Working Group provisionally agreed at first reading on a text for article 2, paragraphs 2 and 3, reading as follows:

Article 2

...

2. For the purpose of this Convention:

/...

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

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

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

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

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

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

3. The term "migrant worker" excludes:

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

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

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

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

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

(f) Refugees and stateless persons;

(g) students and trainees.

/...

Article 4

25. At its 1st and 2nd meetings, held on 25 and 26 September, the Working Group resumed consideration of the pending parts of article 4, on the basis of proposals submitted by the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden contained in document A/C.3/39/WG.1/CRP.3, which had been before the Group at previous sessions and which read as follows:

"Article 4

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

"(a) Are considered as documented or in a regular situation if they possess the requisite authorizations in respect of admission, stay and economic activity;

"(b) Are considered as undocumented or in an irregular situation if they do not possess the authorizations of the State in whose territory they are that are required by law in respect of admission, stay or economic activity, or if they cease to fulfil the conditions to which their admission, stay or economic activity are subject."

26. The Group also had before it a proposal submitted by the representative of Canada during its previous session. The proposal which was reproduced in document A/C.3/39/WG.1/CRP.3, consisted in renumbering article 4 quoted above as article 4 (1) and adding new paragraphs 4 (2) and (3). The proposal reads as follows:

"Article 4

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

"(a) Are considered as documented or in a regular situation if they possess the requisite authorizations in respect of admission, stay and economic activity;

"(b) Are considered as undocumented or in an irregular situation if they do not possess the authorizations of the State in whose territory they are that are required by law in respect of admission, stay or economic activity, or if they cease to fulfil the conditions to which their admission, stay or economic activity are subject.

"2. For the purposes of the present Convention the expressions:

"(a) Permanent migrant worker means a migrant worker in a regular situation [lawful status] as defined in article 4 (1) (a) who has been admitted for an indeterminate period of time;

"(b) Temporary migrant worker means a migrant worker in a regular situation [lawful status] as defined in article 4 (1) (a) who has been admitted for a determinate period of time.

"3. For the purposes of the present Convention the expression migrant worker in a regular situation [lawful status] shall include both permanent migrant workers and temporary migrant workers."

27. After consultations held among the Chairman, the sponsors and interested delegations, the Working Group had before it at its 2nd meeting, on 26 September, a revised text for article 4 reading as follows:

"Article 4

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

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

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

28. As a result of those consultations, the representative of Canada withdrew his proposal as the ideas relating to permanent and temporary migrant workers in his proposal had been taken into account in the new version of article 4.

29. The representative of Yugoslavia proposed that, after the words "have failed" in subparagraph (b), the words "except for reasons beyond their control" should be added. The representative of Greece expressed the opinion that the proposal by Yugoslavia would help in protecting workers who failed to meet certain conditions for reasons beyond their control, including accidents. The representatives of the Netherlands and the United States felt that at the present stage the proposal by Yugoslavia should be kept between brackets.

30. At its 2nd meeting the Working Group provisionally agreed, at first reading, on the following text for article 4:

Article 4

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

(a) Are considered as documented or in a regular situation [lawful status] if they have been granted the requisite permanent or temporary

/...

authorizations in respect of admission, [duration of] stay and employment [or economic activity];

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

Part IV

31. At its 2nd and 3rd meetings on 26 September, the Working Group considered part IV on the basis of proposals made by the delegations of Finland, Greece, Italy, Norway, Portugal, Spain and Sweden which appeared in document A/C.3/39/WG.1/CRP.3. Those proposals read as follows:

"PART IV. PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

"IV.1. The particular categories of migrant workers and members of their families specified below who are in a regular situation as regards their admission, stay and employment or other economic activity, shall enjoy the rights referred to in part IV.

"Frontier workers

"IV.2. (1) Frontier workers, as defined in article 2 (2) (a), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment, excluding rights relating to or arising out of residence and rights arising out of article 44.

"(2) The preceding paragraph shall be subject to any contrary provisions in agreements for the time being in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned.

"(3) Frontier workers shall have the right freely to choose their employment or other economic activity subject to article 51. This right shall not affect their status as frontier workers.

"Seasonal workers

"IV.3. (1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment.

"(2) A seasonal worker who, not counting seasonal interruptions, has been lawfully employed or working in the State of employment for an aggregate period of 24 months shall be entitled to take up other employment or economic activity, subject to any conditions or limitations imposed in accordance with article 51.

"Seafarers and workers on permanent offshore installations

"IV.4. (1) Seafarers, as defined in article 2 (2) (c), workers on permanent offshore installations, as defined in article 2 (2) (d), and members of their families shall enjoy the following rights:

"(a) If the said workers have been authorized to take up residence in the State of employment, they and the members of their families shall be entitled to the rights provided for in parts II and III of this Convention;

"(b) If the said workers have not been authorized to take up residence in the State of employment, they shall be entitled to all of the above-mentioned rights which can be applied to them by reason of their presence or work in the State of employment, excluding rights relating to or arising out of residence and rights arising out of article 44.

"(2) The preceding paragraph shall be subject to any contrary provisions in agreements for the time being in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned.

"(3) For the purpose of this article, the State of employment means the State under whose flag or jurisdiction is operated the ship or installation on which the migrant worker is engaged.

"Itinerant workers

"IV.5. Itinerant workers, as defined in article 2 (2) (e), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence in the territory of the State of employment excluding rights relating to or arising out of residence or employment and rights arising out of article 44."

32. The Working Group also had before it proposals submitted by Canada at its last session and which were reproduced in document A/C.3/39/WG.1/CRP.3. The proposals read as follows:

"(a) That the title part IV be amended to read:

'Provisions applicable to particular categories of temporary migrant workers and members of their families.'

"(b) That article IV-1 be replaced by article 55.

"(c) That article 55 (1) be amended to read:

'States Parties shall apply the following provisions to temporary migrant workers in a regular situation who have been admitted to the receiving country for a specific limited period of time or on the basis of a work contract with an enterprise or employer carrying out in that country specific projects that by their nature are limited in time.'

"(d) That the following paragraph be added to article IV:

'The provisions of articles 22 (4), 43 (a), (b), (c) and (d), 45, 49, 50, 51 and 53 shall not apply to temporary migrant workers and members of their families specified in part IV.'

33. In reply to some questions raised in the course of the debate in relation to the exclusion of certain categories of migrant workers, the representative of ILO stated that ILO instruments had treated the question of definitions in a variety of ways. He stated that while most ILO instruments, in particular the two conventions on social security, were applicable to all migrant workers, the provisions of ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers excluded certain categories of workers who were working on their own account such as frontier workers, artists, members of the liberal professions, trainees and persons who migrated for educational purposes. He pointed out that seafarers were not covered in ILO Convention No. 143 because of the number of ILO instruments dealing specifically with seafarers.

34. Regarding paragraph IV.1, the representative of the United States proposed adding, between square brackets, the words "lawful status" after the words "regular situation" and the words "duration of" after the word "admission". She also proposed replacing the words "economic activity" by the words "relevant factors under the applicable legislation of the State of employment".

35. In connection with subparagraph IV.2 (1), the representative of Denmark proposed the addition of the words "in accordance with the legislation of the State of employment" after the word "Convention".

36. Several delegations expressed their opposition to the proposal by Denmark in subparagraph IV.2 (1) and pointed out that it was restrictive and contradicted the spirit of the Convention. It was argued that making every provision of the Convention dependent on national legislation would weaken the Convention enormously and could turn it into a useless exercise. On the other hand a final clause of the Convention could allow States which so wished to make exclusions for certain categories of workers.

37. On the basis of the discussion held, the representative of Denmark agreed not to press her proposal at that stage.

38. The representative of the Byelorussian SSR, referring to the term "frontier workers", suggested that it could be changed into "frontier migrant workers", thus facilitating reference to the definition of migrant workers elaborated in article 2 of the Convention. Commenting on this proposal, some delegations felt that the

addition of the word "migrant" in the term "frontier workers" was redundant, since the whole Convention dealt with migrant workers. The representative of the Byelorussian SSR subsequently withdrew his proposal.

39. With regard to subparagraph IV.2 (2), the representative of the Federal Republic of Germany sought clarification over the meaning of the term "agreements". In reply it was said that it was the understanding of the co-sponsors that that provision would not affect the relevant provisions contained in any existing agreement between the State of employment, the State of origin or the State of residence.

40. In connection with subparagraph IV.2 (3), it was mentioned that the words "or other economic activity" would be kept in brackets, according to the practice regarding that phrase followed at first reading of other articles of the Convention. Similarly, it was agreed to keep the whole of subparagraph IV.2 (3) in brackets at the present stage because article 51 to which reference was made in that subparagraph had not yet been adopted and because doubts to the substance of that subparagraph had been expressed by some delegations. Clarification was sought by the representative of the Netherlands over the last sentence of article IV.2 (3) that the right of frontier workers freely to choose their employment would not affect their status as frontier workers. In explaining the meaning of the sentence in that subparagraph, the representatives of Finland and Greece stated that it was aimed at a restrictive interpretation: if frontier workers found other employment that would not mean a change in their status as frontier workers.

41. Turning to subparagraph IV.3 (2) concerning seasonal workers, the Working Group agreed to keep such proposals in brackets because of the reference in the text to article 51 which had not yet been adopted. The representatives of the Federal Republic of Germany, France and the Netherlands expressed their doubts over the subparagraph and therefore asked that it be put in brackets.

42. With regard to the provisions under the title "Seafarers and workers on permanent offshore installations", the representative of Norway proposed that the word "permanent" be replaced by the word "fixed". Other proposals in that respect were to use both words so that the title would read "Seafarers and workers on permanent or fixed offshore installations". Finally the Working Group agreed to adopt the Chairman's proposal which consisted in using the terms "seafarers and workers on offshore installations".

43. Referring to subparagraph IV.4 (1) (b), the representative of the Federal Republic of Germany suggested putting brackets at first reading.

44. The Working Group held a debate on the substance of subparagraph IV.4 (2) and a number of proposals were made in that respect. The representative of the United States proposed that, given the similarity of subparagraphs IV.4 (2) and IV.2 (2), the provision should apply to all of part IV. She suggested that the article read: "Part IV shall be subject to any contrary provisions in agreements for the time being in force between the State of employment and the State of origin or of normal residence of the migrant workers concerned and to provisions of national legislation of the State of employment." Other representatives endorsed the

proposal that the substance of IV.4 (2) should apply to all of part IV, and it was agreed to add the wording of that provision in the opening paragraph of part IV (para. IV.1) and thus omit subparagraphs IV.2 (2) and IV.4 (2). With regard to the United States proposal to add the words "and to provisions of national legislation of the State of employment" after the word "concerned", the representative of Greece, interpreting the views of the co-sponsors and supported by the representatives of Mexico and Yugoslavia, expressed strong opposition to the amendment which in their view would have the effect of annulling the entire provision. The representatives of Denmark and the United States agreed that the words "and to provisions of national legislation of the State of employment" could be put in brackets.

45. The representative of the USSR stated that the expression "contrary provisions" in subparagraph IV.4 (2) might create confusion and that the Convention should not contradict treaties already in force. Speaking on behalf of the co-sponsors, the representative of Finland explained that the intention of the co-sponsors in subparagraph IV.4 (2) was to ensure that the Convention did not prohibit the application of higher standards provided for in other international conventions. If the word "contrary" were omitted, that would permit lesser standards being applied. The Working Group finally adopted the Chairman's suggestion that the words "contrary provisions" be replaced by the words "more favourable provisions".

46. It was also agreed during the discussion that, at the end of its work on the Convention as a whole, the Working Group would see to it that any repetition of provisions throughout the text be avoided.

47. In the light of the discussions held, the Group provisionally agreed at first reading on the following text for part IV, which was later supplemented with provisions originally proposed for article 55 (see paras. 48-65 below).

PART IV. PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

IV.1.(1) The particular categories of migrant workers and members of their families specified below who are in a regular situation [lawful status] as regards their admission, [duration of] stay and employment or other [economic activity] [relevant factors under the applicable legislation of the State of employment], shall enjoy the rights referred to in this part of the Convention.

(2) The provisions of this part shall be subject to any more favourable conditions in agreements in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned, [and to the provisions of national legislation.]

Frontier workers

IV.2 (1) Frontier workers, as defined in article 2 (2) (a), shall be entitled to all of the rights provided for in parts II and III of this Convention which

can be applied to them by reason of their presence and work in the territory of the State of employment, excluding rights relating to or arising out of residence [and rights arising out of article 44.]

[(2) Frontier workers shall have the right freely to choose their employment [or other economic activity] subject to article 51. This right shall not affect their status as frontier workers.]

Seasonal workers

IV.3 (1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment.

[(2) A seasonal worker who, not counting seasonal interruptions, has been lawfully employed or working in the State of employment for an aggregate period of 24 months shall be entitled to take up other employment [or economic activity] subject to any conditions or limitations imposed in accordance with article 51.]

Seafarers and workers on offshore installations

IV.4 (1) Seafarers, as defined in article 2 (2) (c), workers on permanent offshore installations, as defined in article 2 (2) (d), and members of their families shall enjoy the following rights:

(a) If the said workers have been authorized to take up residence in the State of employment, they and the members of their families shall be entitled to the rights provided for in parts II and III of this Convention;

[(b) If the said workers have not been authorized to take up residence in the State of employment, they shall be entitled to all of the above-mentioned rights which could be applied to them by reason of their presence or work in the State of employment, excluding rights relating to or arising out of residence [and rights arising out of article 44.]]

(2) For the purpose of this article, the State of employment means the State under whose flag or jurisdiction is operated the ship or installation on which the migrant worker is engaged.

Itinerant workers

IV.5 Itinerant workers, as defined in article 2 (2) (e), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence in the territory of the State of employment excluding rights relating to or arising out of residence or employment [and rights arising out of article 44.]

Article 55

48. At its 2nd, 6th and 7th meetings from 26 to 28 September, the Working Group resumed consideration of a text for article 55. The text for article 55 which was before the Group at previous sessions read as follows:

"Article 55

"III.20. (1) States Parties shall apply the following provisions to migrant workers in a regular situation who have been admitted to the receiving country for a period of time on the basis of a work contract with an enterprise or employer carrying out in that country specific projects that by their nature are limited in time:

"(a) The said migrant workers shall be admitted and authorized to work for the entire period of time required for the carrying out of the duties or assignments concerned;

"(b) The receiving country shall facilitate the installation by the enterprise carrying out the specific project of any necessary facilities for the said migrant workers and their families, such as housing, schools, medical and recreational services. The application of this provision shall not entail additional costs for the receiving State, unless this is provided for in specific agreements;

"(c) Subject to any provisions contained in specific agreements, the said migrant workers shall have the right to have their earnings paid in or transferred to their country of origin or the country of their normal residence;

"(d) The said migrant workers shall be entitled to be accompanied or joined by the spouse and dependent children for the duration of their duties or assignments, in accordance with article 44, paragraphs (1) and (2), except where this is not possible on account of considerations of safety;

"(2) The provisions of articles 35 to 42, article 43, paragraph 1 (e) to (g), article 46, article 48 and article 56 shall also apply to the said migrant workers. The other provisions of part III shall not apply to them;

"(3) Subject to the provisions of this Convention applicable to the said migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific provisions on social and economic matters relating to these migrant workers."

49. The Working Group also had before it a revised text for a chapeau for article 55 submitted at previous sessions by the representative of Italy on behalf of the co-sponsors, Finland, Greece, Italy, Norway, Portugal, Spain and Sweden. The text of the proposal reads as follows:

"States parties shall apply the following provisions to migrant workers who are employed by foreign enterprises or their subsidiaries and are lawfully admitted to the State of employment for a defined period for the execution [in that State] [in its territory] by said enterprises or their subsidiaries, directly or in joint ventures, of specific projects which by their nature are limited in time."

50. After a general exchange of views on the provisions of the article and upon the suggestion of the Chairman, the Working Group decided to hold further consultations among interested delegations with a view to drafting a new text for article 55.

51. At its 6th meeting on 28 September, the Working Group had before it a revised text for article 55 reading as follows:

"Article 55 Project-tied workers

"(1) Project-tied workers, as defined in article 2 (2) (f), and members of their families shall be entitled:

"(a) To all of the rights provided for in parts II and III of this Convention except the provisions of article 43, paragraph 1 (b) and (c), article 45 (b) and articles 52 to 54;

"(b) In addition to the rights recognized in article 47, to have their earnings paid in their country of origin or the country of their normal residence;

"(c) To have written employment contracts, the provisions of which shall not derogate from the rights provided for in this Convention.

"(2) States concerned shall take measures to ensure that employment contracts are not modified or substituted to the detriment of migrant workers.

"(3) States of employment shall encourage the installation by the [enterprise or] employer carrying out the specific project of any necessary facilities for project-tied migrant workers and their families, such as housing, schools, medical and recreational services. Any expenditure arising out of the application of this paragraph shall be borne by the [enterprise or] employer concerned unless otherwise agreed with the State of employment.

"(4) Subject to the provisions of this Convention applicable to project-tied migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific measures on social and economic matters relating to those migrant workers.

"(5) States concerned shall take appropriate measures to ensure that project-tied workers:

"(a) Are adequately covered for the purposes of social security and do not suffer any diminution of rights or duplication of social security deductions;

"(b) In addition to the provisions of article 48, States concerned shall take appropriate measures in order to ensure that they do not suffer from double taxation."

52. During the consideration of the revised text for article 55, the representatives of Yugoslavia and Greece raised questions in relation to where article 55 should be appropriately placed in the Convention. The Working Group agreed that the article should be placed in part IV of the Convention.

53. The representative of Finland pointed out that the proposal contained two distinct aspects. The purpose of the first part of the article was not to give the project-tied workers any privileged position as compared with nationals of the State of employment, but to grant them equal treatment in definite and restricted issues. The purpose was also to protect them from abuse because of their very specific situation. The purpose of the last part of the article was to prevent a situation where those workers would fall short of social protection in their country of origin while not being adequately covered in the State of employment. The purpose was also to encourage States concerned to conclude agreements on the matter.

54. Turning to article 55 (1) (a), the representative of the Federal Republic of Germany proposed putting it in brackets. The Working Group agreed to keep in brackets the words "except the provisions of article 43, paragraph 1 (b) and (c), article 45 (b) and articles 52 to 54", because of the references to articles which had not yet been adopted by the Working Group.

55. Regarding subparagraph (b) of paragraph 1 of the article, the representative of Algeria stated that his delegation would be in favour of the application of the provisions of article 42 to this category of migrant workers. However, he expressed his reservation on the possibility of having their earnings paid in their country of origin or country of normal residence. He therefore proposed putting the entire subparagraph in brackets.

56. The representative of Yugoslavia proposed rewording subparagraph (1) (b) to read: "Project-tied workers shall be entitled to the rights recognized in article 47 or shall have the right to have their earnings paid in the country of origin". In expressing his concern that the words "in addition", might cause some confusion, the representative of Canada suggested replacing them by the words "without prejudice". He pointed out that, in that way, those provisions would apply to project-tied workers while still allowing all migrant workers to transfer funds paid in the State of employment. The representative of Greece suggested adding a provision stating that "if the said worker shall wish to have his earnings paid in the country of origin". The representative of Finland proposed adding a clause stating that "These migrant workers shall have the right to partly transfer their earnings".

57. While stressing the extreme importance of those provisions relating to project-tied migrant workers for his country, the representative of Italy pointed out that all the specific provisions contained in that article were essential to some demands and, far from granting certain privileges, they constituted conditions indispensable for the realization of that type of migration of a technological character.

58. Regarding subparagraph (2), the representative of the United States proposed inserting the words "endeavour insofar as practicable to ..." after the words "States concerned shall". The representative of the Netherlands suggested putting the entire subparagraph (2) in brackets. The representatives of the Byelorussian SSR and India proposed replacing the word "detriment" by the word "disadvantage".

59. After some discussion, the Working Group agreed to merge subparagraphs (1) (a) and 2 in one single subparagraph, to place it before the present subparagraph 1 (a) and to renumber the remaining subparagraphs accordingly.

60. As regards paragraph (3) the Working Group agreed to add the word "members" before the words "members of their families" and to add in brackets the words "States concerned" at the end of the subparagraph. The representative of Algeria placed his reservation on record on the grounds that in his view the provisions of the paragraph gave certain advantages to some categories of migrant workers over others. He proposed that the paragraph be put in brackets.

61. As regards paragraph (5), the representative of Cameroon stressed that the question of social security should be clarified further to ensure better protection of migrant workers and members of their families and, in particular, as regards contributions for their children and their old age insurance to ensure that they continued to benefit from the most advantageous kind of rights regardless of where they might be. She suggested inserting the words "or denial" after the words "discrimination" in subparagraph (5) (a). The representative of India proposed rewording the subparagraph to read "States concerned shall take appropriate measures to ensure that the social security rights of project-tied migrant workers are preserved and that there is no duplication of social security deduction".

62. In view of the technical nature of the issues of social security and double taxation referred to in subparagraphs (5) (a) and (b), the representative of the United States reserved her right to come back to the article at a later stage. She also questioned whether subparagraph 5 (b) was consistent with article 48 which it incorporated by reference.

63. Upon the proposal of the Chairman, the Working Group agreed to start paragraph (5) with a phrase reading "Without prejudice to existing instruments on social security and double taxation".

64. Turning to subparagraph (5) (b), the Working Group agreed to delete the words "States concerned shall take appropriate measures in order to ensure that they".

65. After more discussion, the Working Group agreed on a text for a last article of part IV.6 (originally proposed as article 55) reading as follows:

Article 55 Project-tied workers

1. Project-tied workers, as defined in article 2 (2) (f), and members of their families shall be entitled:

(a) To have written employment contracts in a language they understand, the provisions of which shall not derogate from the rights provided for in this Convention. States concerned shall endeavour insofar as practicable to take measures to ensure that such employment contracts are not modified or substituted to the disadvantage of migrant workers;

(b) To all of the rights provided for in Parts II and III of this Convention except the provisions of [article 43, paragraph 1 (b) and (c), article 45 (b) and articles 52 to 54;]

[(c) [Without prejudice to the rights recognized in article 47], to have their earnings paid in their country of origin or the country of their normal residence;]

[2. States of employment shall encourage the installation by the [enterprise or] employer carrying out the specific project of any necessary facilities for project-tied migrant workers and members of their families, such as housing, schools, medical and recreational services. Any expenditure arising out of the application of this paragraph shall be borne by the [enterprise or] employer concerned unless otherwise agreed with the State of employment [concerned] States.]

3. Subject to the provisions of this Convention applicable to project-tied migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific measures on social and economic matters relating to those workers.

4. Without prejudice to existing instruments on social security and double taxation among States concerned, the States concerned shall take appropriate measures to ensure that project-tied workers:

(a) Are adequately covered for the purposes of social security and do not suffer in their State of origin or normal residence any diminution or denial of rights or duplication of social security deductions;

(b) In addition to the provisions of article 48, they do not suffer from double taxation.

Article 34 bis

66. At its 4th meeting on 27 September, the Working Group considered a text for article 34 bis. In this connection it may be recalled that, during its inter-sessional meeting from 10 to 21 May 1982, the Working Group gave some consideration to the article and agreed that it might need rewording and should be considered at a later stage together with articles 35 and 36 which would subsequently be renumbered. 3/ The text of article 34 bis reads as follows:

/...

"Article 34 bis

"Nothing in part II of this Convention shall be interpreted as implying the recognition of the legality of the situation of a migrant worker or a member of his family who is undocumented or in an irregular situation or any right to the regularization of his situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part V."

67. During the consideration of the article, the representative of the United States proposed replacing the phrase "shall be interpreted as implying the recognition of the legality of the situation" by the phrase "shall be interpreted as according a lawful status to or in any other way affecting the immigration and employment status". She also proposed adding the words "unlawful status" after the words "irregular situation" and modifying the words "international migration" by the words "lawful migration".

68. The Chairman brought the Working Group's attention to General Assembly resolution 3449 (XXX) of 9 December 1975 which established that all the organs of the United Nations system and the specialized agencies should use the term "non-documented or irregular migrant workers" to define those workers who illegally and/or surreptitiously had entered another country to obtain work.

69. The representative of Sweden suggested that the article should be read in conjunction with article 67. He proposed rewording the first sentence of the article to read "Nothing in this part of the Convention shall be interpreted ..." and replacing the words "or any right to the regularization of his situation" by the words "or any right to such regularization of his situation".

70. Referring to the proposal by the United States, the representative of Italy suggested maintaining in the text the words "international migration".

71. After some discussion, the Working Group agreed at first reading for a text for article 34 bis reading as follows:

Article 34 bis

Nothing in this part of the Convention shall be interpreted as [according a lawful status or any other way affecting the immigration or employment status] [implying the regularization of the situation] of a migrant worker or a member of his family who is undocumented or in an irregular situation [unlawful status] or any right to [such] [the] regularization of his situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part V.

Article 85

72. At its 4th and 5th meetings on 27 September, the Working Group resumed its consideration of a text for article 85 reading as follows:

"Article 85

"At the time of signature, ratification, acceptance, approval or accession, any State may declare that it shall apply articles 51, 52, 53, 54 and 55 of the present Convention only in relation to nationals of other States Parties."

73. In the course of the discussion on the article, the representative of Yugoslavia suggested putting the article in brackets as it required more time to be studied in depth, since a reciprocity clause in the context of a convention on migrant workers should be considered in all its implications.

74. The representative of Italy pointed out some problems in connection with any optional clauses. He expressed his preference for working on the basis of reciprocity clauses. He therefore proposed a new formulation for article 85 reading:

"At the time of signature, ratification, acceptance, approval or accession, any State may indicate the parts or articles which it will apply only to the nationals of other States."

He stressed that such a provision in the Convention would have the effect of attracting more ratifications.

75. During the debate, the majority of the delegations expressed their objection to the proposal by Italy, among them the representatives of Norway, Finland, Yugoslavia, Sweden, Spain, Greece, Portugal and Canada. They stressed that such a formulation was too broad, detracted from the purpose of the Convention and invited more arbitrary application of the Convention. They pointed out that if such a formulation were to be adopted it would defeat the purpose of the whole Convention. They emphasized that the mandate of the Working Group was to draft a Convention applicable to all migrant workers and that the aim of the Convention should not be sacrificed for a speedy ratification.

76. At the 5th meeting of the Working Group the representative of Italy submitted a revised text of his proposal reading as follows:

"At the time of signature, ratification, acceptance, approval or accession, any State may indicate the provisions of parts III and IV of the present Convention which it will apply only to the nationals of other States Parties."

77. After some discussion, the Working Group provisionally agreed at first reading to keep both the proposed article for article 85 and the revised proposal by Italy in two columns in brackets. The article read as follows:

Article 85

[At the time of signature, ratification, acceptance, approval or accession, any State may declare that it shall apply [articles 51, 52, 53, 54 and 55] of the present Convention only in relation to nationals of other States Parties.]

Article 85

[At the time of signature, ratification, acceptance, approval or accession, any State may indicate the provisions of parts III and IV of the present Convention which it will apply only to the nationals of other States Parties.]

Article 81 bis

78. At its 5th meeting on 27 September, the Working Group had before it a text for article 81 bis to be included in the final provisions submitted by the representative of Denmark. The article read as follows:

"Article 81 bis

"(1) Any State Party which ratifies this Convention may, by a declaration appended to its ratification, exclude from application of the Convention, parts or articles and/or one or more particular categories of migrant workers.

"(2) Such declaration does not affect the rights established for migrant workers and members of their families in the Covenant on Civil and Political Rights.

"(3) Any State Party which has made such a declaration may at any time cancel that declaration by a subsequent declaration."

79. The representative of Denmark stated that as Denmark was a receiving country, the background of her proposal was, in view of her withdrawal of her earlier proposal, to have the definition on migrant workers, as laid down in the European Convention on the Legal Status of Migrant Workers, included in the present Convention. She added that her suggestion was to have self-employed and certain categories (frontier workers, artists, other entertainers and sportsmen engaged for a short period and members of a liberal profession, seamen, persons undergoing training, seasonal workers and workers carrying out specific work) mentioned in article 81 bis so as to ensure the possibility of their being excluded from the scope of other articles in the text. She stressed that her proposal should not be seen as a wish to be restrictive about giving rights to the migrant workers. In recognizing the humane and most valuable principles and provisions laid down in the Convention, she stressed that the aim of the Working Group should be to make a Convention which could be ratified as far as possible by as many States as possible. Thus she found it unrealistic to believe that the actual and most detailed text could be ratified by any State. If, however, nuanced ways of limited application were established, there would be the hope that ratifications could start soon and ratification could expand in scope with the progress of national legislation. Taking into account that the Convention itself seemed to be becoming most detailed, she suggested that the possibilities of non-application of certain provisions should be detailed, so that single articles could be excluded from ratification and that should be established in the final provisions.

80. The majority of the delegations expressed their doubts about having such a clause in the Convention. The representatives of Greece and Spain placed their reservations on record stating that the fact that some States might encounter some obstacles preventing them from ratifying the Convention could not justify making a reservation on entire parts of the Convention. They added that, rather than preventing a State from ratifying the Convention, provisions should be made whereby a State could be exempted from ratifying certain articles which would be specified in the Convention. They felt that it was premature to discuss the articles to be specified. The representative of the Byelorussian SSR expressed his difficulty over the proposal made by Denmark. The representative of the Cameroon raised her concern over the practical effects of the proposed article. She stated that States which would have some reservations at the time of ratification of the Convention for some reasons to be specified should be requested in the same Convention to submit a report on a regular basis indicating whether their reservations continued until such time when the obstacles they met at ratification were removed. The representative of Tunisia placed his reservation on record and stated that he could not agree with the proposal as it would allow more exclusion of certain categories of workers than certain ILO conventions. Further, he pointed out the weakness of the proposed article, since, in his view, its provision referred only to the International Covenant on Civil and Political Rights and ignored the provisions of the International Covenant on Economic, Social and Cultural Rights. The representative of Finland emphasized his objection to the proposal, stating that it did not specify what should be excluded. He proposed putting the entire proposal in brackets.

81. After some discussion, the Working Group agreed to place the proposal by Denmark in brackets and to place it after article 87. The text of the articles reads as follows:

[Article 81 bis

(1) Any State Party which ratifies this Convention may, by a declaration appended to its ratification, exclude from application of the Convention, parts or articles and/or one or more particular categories of migrant workers.

(2) Such declaration does not affect the rights established for migrant workers and members of their families in the Covenant on Civil and Political Rights.

(3) Any State Party which has made such a declaration may at any time cancel that declaration by a subsequent declaration.]

II. ORGANIZATION OF WORK OF THE WORKING GROUP

82. At its 8th meeting on 1 October, the Working Group had a preliminary discussion on the form of the draft Convention and on the approach to its future work.

83. The Chairman stated that he would prepare an explanatory paper on the text of the draft Convention, as it stood after its first reading, to be circulated to all Governments together with the draft Convention which would be issued in a separate document.

84. During the debate the representatives of Finland, Norway, Sweden, France, Indonesia and the Philippines stated that they were not prepared at the present session to discuss, even in general terms, the texts approved provisionally at first reading. The representative of Morocco, supported by the Byelorussian SSR, suggested that the Working Group should proceed at least with a preliminary exchange of views on the text of the draft Convention without calling it a second reading. In that connection the representative of Morocco stressed that it would be advisable for the Working Group at its second reading not to reintroduce amendments on the text outside brackets and on which the Working Group had agreed upon at first reading. The representative of Yugoslavia, while recognizing the rights of representatives to propose amendments on any part of the text outside brackets, expressed the opinion that it would not be advisable to re-examine that text as systematically as the text in brackets. The representative of the Federal Republic of Germany expressed the view that, since the language outside brackets in the draft Convention was only provisionally agreed upon at first reading and was subject to further review, it should be re-examined at the second reading. The representative of Indonesia expressed the opinion that a review of the language outside brackets would have its merits in the second reading. The representatives of the United States and Denmark suggested that the Working Group should follow the sequence of the articles of the draft Convention during its review at the second reading. The representative of Italy suggested that the Working Group should consider inviting interested international agencies to make general statements in areas within their respective competence at the beginning of the session.

85. Upon the suggestion of the Chairman, the Working Group agreed to have a general debate at the beginning of the second reading of the draft Convention, allowing each delegation to make a general statement on the provisionally agreed texts. The Working Group also agreed to appeal to Governments to submit all proposals concerning the provisional texts before the beginning of its second reading. Finally, the Group expressed its preference for maintaining the method of work followed during the first reading and, therefore, that the General Assembly should allow the Group to hold two sessions every year in New York of two weeks' duration each, an inter-sessional meeting immediately after the first regular session of the Economic and Social Council and a second session at the beginning of each regular session of the General Assembly, until completion of the final draft of the Convention.

86. At its 10th meeting on 5 October 1984, the Working Group adopted the present report.

III. TEXT OF ARTICLES OF THE DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES TO WHICH THE WORKING GROUP PROVISIONALLY AGREED ON DURING THE THIRTY-NINTH SESSION OF THE GENERAL ASSEMBLY

Article 2

...

2. For the purpose of this Convention:

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

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

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

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

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

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

3. The term "migrant worker" excludes:

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

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

/...

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

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

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

[(f) Refugees and stateless persons;]

[(g) Students and trainees.]

Article 4

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

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

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

Article 34 bis

Nothing in this part of the Convention shall be interpreted as [according a lawful status or any other way affecting the immigration or employment status] [implying the regularization of the situation] of a migrant worker or a member of his family who is undocumented or in an irregular situation [unlawful status] or any right to [such] [the] regularization of his situation, nor shall it prejudice the measures intended to ensure sound and equitable conditions for international migration as provided in part V.

Article 55 Project-tied workers

1. Project-tied workers, as defined in article 2 (2) (f), and members of their families shall be entitled:

(a) To have written employment contracts in a language they understand, the provisions of which shall not derogate from the rights provided for in this Convention. States concerned shall endeavour insofar as practicable to take measures to ensure that such employment contracts are not modified or substituted to the disadvantage of migrant workers;

(b) To all of the rights provided for in Parts II and III of this Convention except the provisions of [article 43, paragraph 1 (b) and (c), article 45 (b) and articles 52 to 54;]

[(c) [Without prejudice to the rights recognized in article 47], to have their earnings paid in their country of origin or the country of their normal residence;]

[2. States of employment shall encourage the installation by the [enterprise or] employer carrying out the specific project of any necessary facilities for project-tied migrant workers and members of their families, such as housing, schools, medical and recreational services. Any expenditure arising out of the application of this paragraph shall be borne by the [enterprise or] employer concerned unless otherwise agreed with the State of employment [concerned] States.]

3. Subject to the provisions of this Convention applicable to project-tied migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific measures on social and economic matters relating to those workers.

4. Without prejudice to existing instruments on social security and double taxation among States concerned, these States concerned shall take appropriate measures to ensure that project-tied workers:

(a) Are adequately covered for the purposes of social security and do not suffer in their State of origin or normal residence any diminution or denial of rights or duplication of social security deductions;

(b) In addition to the provisions of article 48, they do not suffer from double taxation.

PART IV. PROVISIONS APPLICABLE TO PARTICULAR CATEGORIES OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

IV.1 (1) The particular categories of migrant workers and members of their families specified below who are in a regular situation [lawful status] as regards their admission, [duration of] stay and employment or other [economic activity] [relevant factors under the applicable legislation of the State of employment], shall enjoy the rights referred to in this part of the Convention.

(2) The provisions of this part shall be subject to any more favourable conditions in agreements in force between the State of employment and the State of origin or of normal residence of the migrant worker concerned, [and to the provisions of national legislation.]

Frontier workers

IV.2 (1) Frontier workers, as defined in article 2 (2) (a), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State

of employment, excluding rights relating to or arising out of residence [and rights arising out of article 44.]

[(2) Frontier workers shall have the right freely to choose their employment [or other economic activity] subject to article 51. This right shall not affect their status as frontier workers.]

Seasonal workers

IV.3 (1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment.

[(2) A seasonal worker who, not counting seasonal interruptions, has been lawfully employed or working in the State of employment for an aggregate period of 24 months shall be entitled to take up other employment [or economic activity] subject to any conditions or limitations imposed in accordance with article 51.]

Seafarers and workers on offshore installations

IV.4 (1) Seafarers, as defined in article 2 (2) (c), workers on permanent offshore installations, as defined in article 2 (2) (d), and members of their families shall enjoy the following rights:

(a) If the said workers have been authorized to take up residence in the State of employment, they and the members of their families shall be entitled to the rights provided for in parts II and III of this Convention;

[(b) If the said workers have not been authorized to take up residence in the State of employment, they shall be entitled to all of the above-mentioned rights which could be applied to them by reason of their presence or work in the State of employment, excluding rights relating to or arising out of residence [and rights arising out of article 44.]]

(2) For the purpose of this article, the State of employment means the State under whose flag or jurisdiction is operated the ship or installation on which the migrant worker is engaged.

Itinerant workers

IV.5 Itinerant workers, as defined in article 2 (2) (e), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence in the territory of the State of employment excluding rights relating to or arising out of residence or employment [and rights arising out of article 44.]

Article 85

[At the time of signature, ratification, acceptance, approval or accession, any State may declare that it shall apply [articles 51, 52, 53, 54 and 55] of the present Convention only in relation to nationals of other States Parties.]

Article 85

[At the time of signature, ratification, acceptance, approval or accession, any State may indicate the provisions of parts III and IV of the present Convention which it will apply only to the nationals of other States Parties.]

Article 81 bis

(1) Any State Party which ratifies this Convention may, by a declaration appended to its ratification, exclude from application of the Convention, parts or articles and/or one or more particular categories of migrant workers.

(2) Such declaration does not affect the rights established for migrant workers and members of their families in the Covenant on Civil and Political Rights.

(3) Any State Party which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

Notes

1/ A/C.3/38/1 and A/C.3/38/5.

2/ "Provisionally agreed upon" means that the text is subject to further review.

3/ For further details see paragraph 63 of the report of the Working Group in May 1982 contained in document A/C.3/37.1.
