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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

Chairman: Mr. Claude HELLER (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

Addendum

Article 60

1. The Working Group considered article 60 regarding seafarers and workers on offshore installations at its 3rd and \_\_\_\_ meetings, on 27 September 1989 and on \_\_\_\_\_ 1989, the basis of article 60 as contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"1. Seafarers, as defined in article 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 45].]

"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."

2. The Working Group also had before it a revised text for article 60 submitted by the Mediterranean and Scandinavian (MESCA) group of countries contained in paragraph 277 of its report (A/C.3/43/1), reading as follows:

"1. Seafarers, as defined in article 2 (c), workers on permanent offshore installations, as defined in article 2 (2) (d), shall enjoy the following rights:

"(a) If the said workers have been granted a residence permit in the State of employment, they and the members of their families shall be entitled to the rights provided for in part IV 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.

"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."

New article 60

3. At the 3rd meeting, on 27 September 1989, the Working Group was seized with the following proposal by the Netherlands and Norway for article 60 regarding seafarers:

"1. Seafarers, as defined in article 2 (2) (c), workers on 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 stay and to work in the State of employment, they and the members of their families who are documented or in a regular situation, shall be entitled to all the rights provided for in part IV of this Convention;

"(b) In derogation to article 57, if the said workers have not been authorized to stay or to work in the State of employment, such States shall give favourable consideration to granting the migrant workers rights such as those provided for in parts III and IV of this Convention, which could be applied to them by reason of their work in the State of employment.

"2. For the purpose of this article, the State of employment means the State under whose flag the ship is operating or in which the offshore installation is registered, unless the seafarer or worker on an offshore

installation has a contract of employment with an employer or an enterprise who is under the jurisdiction of another State, in which case the latter State shall be considered as the State of employment."

4. Commenting on the above-mentioned proposal, the representative of Finland emphasized that the general purpose of including such a provision was to specify which rights applied to that category of workers. If part V of the draft Convention did not specify those rights then the general provisions of the Convention would apply. Regarding subparagraph (b) of paragraph 1, he suggested deletion of reference to part III because its retention would exclude applicability of basic human rights to seafarers. Similarly, reference to article 57 should also be deleted. The view of Finland regarding part III was shared by Greece and Algeria.

5. The representative of Japan stated that in the view of her Government no reference to seafarers should be made in the Convention since there were already ILO Conventions on the matter.

6. The representative of the United States shared the view of Japan and pointed out that the ILO had already adopted 26 Conventions and 21 recommendations on seafarers, and that other specialized ILO Conventions also covered the issues. He suggested that it should be mentioned in part I and part III that seafarers were excluded from the scope of the Convention. Inclusion of seafarers would require amending the definition of "State of employment" already adopted by the Working Group.

7. The representative of the Federal Republic of Germany stated that seafarers should not be covered by the Convention. Regarding subparagraph (a) of paragraph 1 of the proposal, he said that in his country there were no seafarers or workers on offshore installations that needed work permits as normal migrant workers. Their inclusion in the Convention would give rise to expectations for employment and stay in the State of employment. In fact, it was rather obvious that shipowners would not employ normal migrant workers because they would be reluctant to accord them all those rights. Regarding subparagraph (b) of paragraph 1, he said the approach was acceptable for his delegation with some minor changes, including replacing the phrase "by reason of their work" by the phrase "by nature of their work or activity".

8. The representative of the Netherlands said that the provision on seafarers had to be included in the draft Convention since several delegations had expressed strong feelings on that point. As far as his delegation was concerned, all rights in part III of the Convention could be granted to seafarers. Referring to the text of the proposal by the Netherlands and Norway, he said that in subparagraph (b) of paragraph 1, he could accept deletion of reference to part III and only mention article 25 as well as part IV.

9. The representative of Greece stated that the new article 60 should be maintained in the Convention. The representative of Italy said that reference to part III should be maintained in subparagraph (a) of paragraph 1 since it referred to basic human rights. Paragraph 2 of the proposed article was important, he said, because it implied equality of treatment of seafarers with nationals.

10. The representative of Algeria was of the opinion that there was inconsistency in the phrase in subparagraph (b) of paragraph 1 which read "if the said workers have not been authorized to stay or to work". She said that in such a case those persons would be irregular migrant workers and should be treated as such. This view was shared by the representative of France.

11. With reference to paragraph 2 of new article 60, the representative of Australia stated that if the term "State of the flag" were defined in the article, that might be problematic since there were different provisions in different legal systems which might result in a clash of jurisdictions. That view was shared by the representative of the United States.

12. The representative of France, referring to paragraph 2, stated his disagreement with the phrase "unless the seafarer or worker of an offshore installation has a contract of employment with an employer or an enterprise who is under jurisdiction of another State". He said that this phrase would give rise to problems of jurisdiction among several countries.

13. In the view of the representative of Denmark, it was not necessary to include seafarers in the Convention given the complexity of the problems connected with that category of workers and given the protection already accorded to them in numerous ILO Conventions. Besides, his delegation had a problem of substance, because his country would not be able to secure equal treatment with respect to remuneration for people who were not residents of Denmark, be they Danish or not. The reason for this was that the Act on the Danish International Ships register (DIS) contained a section which stipulated that collective agreements on wages and working conditions for employees on vessels on DIS, which had been concluded by a Danish trade union, might only comprise persons who were residents of Denmark. It was the firm belief of the Danish delegation that this was not a discriminatory provision with regard to national origin. Employment on board ships registered in DIS was open to anybody residing in Denmark. All seamen, no matter where they resided, were covered by Danish legislation and had the right to organize and conclude collective agreements. All persons employed on board a Danish ship thus had the same basic rights.

14. After further discussion the Working Group agreed that, since there was no consensus regarding new article 60, informal consultations would be held to facilitate the Group's task.

#### Title of part VI

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

15. During the consideration of the title of part VI of the representative of France suggested to delete the word "lawful".

16. The representative of the Federal Republic of Germany expressed his objection to deleting the word "lawful" because without that word the title might suggest that it would also concern illegal migration.

17. The representative of Morocco recalled that as the Convention was recommended within the framework of the Decade to Combat Racism and Racial Discrimination, one of its main objectives was to avoid the recurrence of the incidents of 1972 involving clandestine migrant workers. Therefore, she said that her delegation did not have any problem in maintaining the word "legal".

18. The representative of Finland suggested that one of the main objectives of the Convention was to ensure lawful conditions of migration. All the various concerns could be met if the word "lawful" was placed before the word "conditions".

19. The Working Group decided to take up the discussion of the title of part VI in informal consultations.

20. At its 3rd meeting, on 27 September 1989, the Working Group adopted the title of part VI of the Convention as follows:

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

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