



General Assembly

Distr.
GENERAL

A/C.3/43/1
20 June 1988
ENGLISH
ORIGINAL: ENGLISH/FRENCH/
SPANISH

Forty-third session
THIRD COMMITTEE
Item 12 of the preliminary list*

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

INTRODUCTION

1. The Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families, open to all Member States, was established under General Assembly resolution 34/172 of 17 December 1979.
2. The Working Group has since held the following sessions at United Nations Headquarters: (a) the first session, during the thirty-fifth session of the General Assembly, from 8 October to 19 November 1980; (b) a first inter-sessional meeting, from 11 to 22 May 1981; (c) a second session, during the thirty-sixth session of the Assembly, from 12 October to 20 November 1981; (d) a second inter-sessional meeting, from 10 to 21 May 1982; (e) a third session, during the thirty-seventh session of the Assembly, from 18 October to 16 November 1982; (f) a third inter-sessional meeting, from 31 May to 10 June 1983; (g) a fourth session, during the thirty-eighth session of the Assembly, from 27 September to 6 October 1983; (h) a fourth inter-sessional meeting, from 29 May to 8 June 1984; (i) a fifth session, during the thirty-ninth session of the Assembly, from

* A/43/50.

26 September to 5 October 1984; (j) a fifth inter-sessional meeting, from 3 to 14 June 1985; (k) a sixth session, during the fortieth session of the Assembly, from 23 September to 4 October 1985; (l) a seventh session, during the forty-first session of the Assembly, from 24 September to 3 October 1986; (m) a sixth inter-sessional meeting, from 1 to 12 June 1987; (n) an eighth session during the forty-second session of the General Assembly, from 22 September to 2 October 1987; and a seventh inter-sessional meeting, from 31 May to 10 June 1988.

3. By its resolution 42/140 of 7 December 1987, the General Assembly, inter alia, took note with satisfaction of the report of the Working Group (A/C.3/42/1 and A/C.3/42/6) and, in particular, of the progress made by the Group and decided that, in order to enable it to complete its task as soon as possible, the Working Group should again hold an inter-sessional meeting of two weeks' duration in New York, immediately after the first regular session of 1988 of the Economic and Social Council. In paragraph 3 of the resolution, the Assembly invited the Secretary-General to transmit to Governments the reports of the Working Group so as to enable the members of the Group to continue the drafting, in second reading, of the draft Convention during the inter-sessional meeting to be held in the spring of 1988, as well as to transmit the results obtained at that meeting to the Assembly for consideration during its forty-third session. In paragraph 4 of the resolution, the Assembly also invited the Secretary-General to transmit those documents to the competent organs of the United Nations and to the international organizations concerned, for their information, so as to enable them to continue their co-operation with the Working Group. Further, the Assembly decided that the Working Group should meet during the forty-third session of the Assembly, preferably at the beginning of the session, to continue the second reading of the draft International Convention and requested the Secretary-General to do everything possible to ensure adequate secretariat services for the Working Group for the timely fulfilment of its mandate, both at its inter-sessional meeting after the first regular session of 1988 of the Economic and Social Council and during the forty-third session of the Assembly.

4. Thus, in accordance with paragraphs 3 and 4 of General Assembly resolution 42/140 and prior to the forty-third session of the Assembly, the Secretary-General transmitted the reports of the Working Group (A/C.3/42/1 and A/C.3/42/6) to Governments, competent organizations of the United Nations system and international organizations concerned.

5. In pursuance of General Assembly resolution 42/140, the Working Group met at United Nations Headquarters from 31 May to 10 June 1988 under the chairmanship of Mr. Antonio González de León and the vice-chairmanship of Mr. Juhani Lönnroth. It held 16 meetings with the participation of delegations from all regions. Observers for the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO) also attended the meetings.

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

(a) Reports of the Working Group on its work in 1987 (A/C.3/42/1 and A/C.3/42/6);

(b) Text of the preamble and articles of the draft International Convention on the Protection of the Rights of All Migrant Workers and Their Families provisionally agreed upon by the Working Group during the first reading (A/C.3/39/WG.1/WP.1);

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

(d) Proposals for part IV of the draft International Convention (A/C.3/43/WG.1/CRP.1/Rev.1);

(e) Letter dated 3 May 1988 submitted by ILO (A/C.3/43/WG.1/CRP.2).

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

(a) Previous reports of the Working Group (A/C.3/35/13, A/C.3/36/10, A/C.3/37/1, A/C.3/37/7 and Corr.1 and 2, A/C.3/38/1, A/C.3/38/5, A/C.3/39/1, A/C.3/39/4 and Corr.1, A/C.3/40/1, A/C.3/40/6 and A/C.3/41/3);

(b) Cross-references in the draft International Convention on the Protection of the Rights of All Migrant Workers and Their Families (A/C.3/40/WG.1/CRP.3);

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

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

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

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

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

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

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

(j) Comments of the Government of Colombia on the report of the Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families (A/C.3/40/WG.1/CRP.2);

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

(l) Working paper submitted by Finland, Greece, Italy, Norway, Portugal, Spain and Sweden concerning the definition of "migrant workers" contained in the revised proposal for part I, articles 2 and 4, and part IV (A/C.3/38/WG.1/CRP.5).

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

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

PART IV

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

Former article 37

9. At its 8th meeting, on 3 June 1988, the Working Group resumed consideration of a text for former article 37, which it had left pending from its fall session (see A/C.3/42/6, paras. 88-95), based on the text for the old article 37, as it appeared in document A/C.3/39/WG.1/WP.1 adopted at the first reading, which reads as follows:

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

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

10. It may be recalled that during that session several delegations had expressed the view that article 37 did not seem indispensable to the Convention and the Working Group had thus decided, at its 4th meeting, on 28 September 1987, in light of its discussions, to consider a text for an article 37 at a later stage.

11. At the 8th meeting, the Chairman read out a text for former article 37 which had emerged as a result of informal consultations, reading as follows:

"Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States parties shall be subject to the limitations set forth in the present Convention."

12. At the same meeting, the Working Group adopted a text for old article 37 and decided that it would be placed in part VIII of the Convention and renumbered accordingly.

13. The representative of the United States of America stated that his delegation agreed to join the consensus on the article which, in the first reading, had been numbered article 37. However, he wished to make it absolutely clear that it was his delegation's understanding that the article as adopted reaffirmed the well recognized principle that all States have the sovereign right to adopt and enforce their own immigration policies. In this regard, his delegation understood the word "admission", in this article, in its broadest concept, to encompass all terms and conditions pursuant to which migrant workers and members of their families may enter and remain in the United States, as well as those conditions which would result in their expulsion.

14. The representative of France stated that his delegation interpreted the expression "criteria governing admission" as referring to the body of rules governing the immigration of workers and members of their families in France, whether such persons had requested the necessary authorizations before or after entering French territory. Furthermore, in his delegation's view, the new article should be construed to mean that other matters related to legal situations and treatment were subject to the provisions of the Convention only if the latter so provided: that was an attempt to clarify the meaning of the sentence, which should logically have been so worded.

15. The delegation of Canada supported the statements made on article 37 by the delegations of the United States and France. The delegation of Canada agreed that the interpretation of the word "admission" in this article should be given its broadest ambit, so that it would include such issues as the duration of stay, the terms and conditions of admission and the general immigration policy of a State. In that regard, the Government of Canada would give such an interpretation to the word "admission" in its interpretation and application of the Convention.

16. The representative of Finland stated that the term "legal situation", in the second sentence of article 37, should not be interpreted as depriving migrant workers finding themselves in an illegal situation of their human rights safeguards.

17. The representative of the Federal Republic of Germany stated that his delegation could not accept the second sentence of the article, since it was of the view that the provisions of the Convention did not contain only limitations on the States concerned; it would therefore be more accurate to speak of limitations "resulting from the provisions of the present Convention". However, in order not to block the consensus, he would be content if his position was duly reflected in the report. In addition, he endorsed the statement made by the representative of France.

18. The representative of Italy stated that it was his understanding that the first phrase of article 37 applies also to foreigners already present in the territory of the State who, not having been admitted as migrant workers or as members of their family, seek a permit of work and/or an authorization of residence as migrant workers or members of their family.

19. While stating that, in a spirit of compromise, she could join the consensus which was emerging with regard to article 37, the representative of Algeria said that in her view none of the criteria adopted by the State of employment should diminish, or be applied in such a way as to diminish, the rights and guarantees provided for in the future Convention.

20. The representative of Sweden stated that his delegation had not favoured the inclusion of article 37 in the Convention. A provision saying that nothing in the Convention should affect the rights of States parties to establish certain rules could undermine the other provisions of the Convention and this gave particular concern as the Convention lays down fundamental human rights, which always have to be respected by all States.

21. The representative of Cape Verde stated that he would have preferred not to have this article inserted in the draft Convention. However, for the sake of compromise, he accepted the text as agreed with the understanding that it shall not be interpreted in such a way as to invalidate rights accorded to migrant workers and members of their families in the present draft Convention or in other international legal instruments applicable to them. As to the expression "legal situation", the delegation of Cape Verde understood it as referring to the set of rights or obligations recognized by or imposed upon the migrant workers or members of their families and not the "legal status" as to their presence in the territory of a given State of employment.

22. The text for old article 37 adopted on second reading by the Working Group and which will be placed in part VIII of the Convention and renumbered accordingly reads as follows:

PART VIII

General provisions

Article ...

Nothing in the present Convention shall affect the right of each State party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States parties shall be subject to the limitations set forth in the present Convention.

Article 50

23. At its 1st, 2nd, 3rd and 9th meetings, on 31 May and 1 and 6 June 1988, the Working Group considered a new text for an article which would become article 50 on the basis of a text proposed by Portugal and elaborated on by the Mediterranean and Scandinavian (MESCA) group of countries and other interested delegations at their recent informal meeting at Athens, which reads as follows:

"1. Members of the families of migrant workers who have been residing with the migrant worker in the State of employment shall not be regarded as in an irregular situation in the case of death of the migrant worker or of divorce or of separation.

"2. States of employment shall favourably consider granting to these family members authorizations to stay at least during the remaining period of the migrant workers' relevant authorizations and in this respect take into account the length of time in which they have already resided in that State."

24. The representative of the Netherlands said that the objective of this proposal should ensure that in the event of the death or divorce of a migrant worker, dependent family members would not find themselves in an irregular situation. He stressed that the purpose of the provision was not to establish a new status for such family members but to specify a certain period of time in which they could legally remain in the State of employment. He proposed to add the word "immediately" in paragraph 1, after the words "shall not" and before the words "be regarded", in order to specify a limitation of time.

25. The representative of France, while pointing out that it was not necessary to have this article dealing with exceptional situations which would be dealt in another manner, proposed to add the word "regularly" after the word "residing" and to replace the words "in the case of" by "because" in paragraph 1.

26. The representative of Morocco stated that her delegation was opposed to linking the permits of dependants to that of the migrant worker and questioned the meaning of the word "separation" in paragraph 1.

27. The representative of India said that, in his opinion, a time-limit should be incorporated into paragraph 2 and that the provisions of this article should not be limited to cases resulting from death, divorce or separation, but should be extended to include illness and the loss of limb.

28. The representative of the Federal Republic of Germany stated that his delegation had difficulty in accepting this proposal because it was not automatic in all States of employment that the family members of a migrant worker would be entitled to a residence permit on their own behalf.

29. The representative of the United States of America stated that in his country the status of family members was tied to that of the migrant worker and that in the case of death or divorce, such family members of temporary migrant workers would be in an irregular situation. However, he stated that in such situations family members would be granted a reasonable period of time to remain in the country. This was usually 30 days but could be shortened or extended in extenuating circumstances. He proposed to replace the words "shall not be regarded as in an irregular situation", in paragraph 1, with "shall be allowed to remain in the State of employment for a reasonable period of time". In paragraph 2, he proposed to delete the word "favourably" in the first line.

30. The representative of Algeria stated that, in her delegation's view, the death of a migrant worker or divorce should leave the worker's family in an irregular situation, and that the family should be able to decide freely whether it wished to remain in the State of employment or to leave it. She also considered that no parallel could be drawn between the case of a migrant worker who had recently settled in the State of employment and those who had been there for several decades and whose children might have been born in that State or might have arrived there in their infancy and, in most cases, had known no country other than the State of employment. Lastly she stated that, having suffered the death of a migrant worker or in the event of divorce, the family should obviously not also be placed in an irregular situation, and that it was inappropriate to carry out the implied merger in article 50, since in some States of employment the residence permits issued to the migrant worker's family were distinct from that of the migrant worker and were renewed automatically upon their expiry.

31. Regarding paragraph 2, the representative of Australia drew the attention of the Working Group to the practical problem presented to the State of employment in the case of a migrant worker who was permitted to enter the country for five years and then died after only one month. As this article now reads, the State of employment would be under an obligation to consider favourably allowing the family members to stay in the country for the remaining five years. There seemed to be a contradiction in these circumstances between giving favourable consideration to their continued stay and taking into account the period for which they had already resided in the State of employment.

32. In view of the difficulty which several delegations expressed with the word "separation" in paragraph 1, the representative of Greece suggested to add the word "legal" before "separation".

33. The representative of the Union of Soviet Socialist Republics stated that in the legislation of the USSR, the concept of legal separation was unknown. But his delegation could accept the inclusion of this notion because in the USSR the legal marital status of foreign citizens is defined according to the national law of their countries.

34. The representative of China stated that, in the view of his delegation, the provisions of article 50 were addressing some specific humanitarian concern in the Convention. He added that in China the concept of legal separation does not exist. He suggested to delete the words "and in this respect take into account the length of time in which they have already resided in that State" in paragraph 2.

35. The representative of Finland stated that in his country members of the family had individual residence permits. Therefore, the mere fact of death of the spouse would not affect the right of the family members to stay. In his view, it was not logically consistent to include the word "immediately" as suggested by the representative of the Netherlands, but he could support the French proposal to replace "in the case of" with "because" in paragraph 1.

36. Speaking on the proposal to delete the word "favourably" from the first line of paragraph 2, the representative of Morocco stressed the importance her delegation attached to retaining this word.

37. The representative of the Netherlands said that he was willing to withdraw his proposal to insert the word "immediately" in paragraph 1 and supported the proposal of the United States of America to add the words "for a reasonable period of time". He had no objection to retaining the word "favourably".

38. The representative of India proposed to merge paragraphs 1 and 2 and to reword them into one paragraph as follows:

"Members of the families of migrant workers who have been residing with the migrant worker in the State of employment shall be permitted to stay during the remaining period of the migrant worker's relevant authorization in the case of the death of the migrant worker or of divorce."

39. The representative of Canada stated that, in the view of his delegation, the important aspect of article 50 was not necessarily the absolute right of the members of the family of the migrant worker to remain in the State of employment, but the obligation of States to consider granting such permission taking into account humanitarian grounds. He proposed to combine the contents of paragraphs 1 and 2 and to reword them to read as follows:

"As a result of the death, separation or divorce of a migrant worker, the State of employment shall favourably consider, on humanitarian grounds, granting to the members of the family of such migrant worker, permission to remain for a reasonable period of time, taking into account the length of time for which they have already resided in that State."

40. The representatives of Australia and Norway supported the proposal made by the delegation of Canada.

41. Speaking on the Canadian proposal, the representative of Finland stated that, in the view of his delegation, the State of employment was not obliged to consider favourably granting dependants their own right to remain in that State beyond the period allowed to the migrant worker. In reference to the Italian proposal, he said that the use of the term "family reunion" would not cover cases of dependants who had entered the State of employment together with the migrant worker. In this connection, the representative of Finland proposed the words "persons who are permitted to reside with a migrant worker" in order to take into account all cases.

42. At the 3rd meeting, on 1 June, the Chairman read out a text for article 50 that had emerged as a result of informal consultations, which read as follows:

"States of employment shall, in case of the death of a migrant worker, divorce or separation according to applicable law, give favourable consideration to granting to the members of the family of the migrant worker permission to stay. If such permission is not granted, they shall be given a reasonable period of time before departure to settle their affairs in the State of employment."

43. The representative of Italy said that it was clear that the Working Group was considering cases based on family reunion and not of family members authorized to enter the country in their own capacity as migrant workers. He proposed one single paragraph to read as follows:

"Members of the families of migrant workers who have been admitted to reside with the migrant worker in the State of employment in consideration of family reunion (or in application of article 44) shall not be regarded as being in an irregular situation as a result of the death of the migrant worker or of divorce or separation. To this effect, States shall favourably consider granting to these family members authorizations to stay at least during the remaining period of the migrant workers' relevant authorizations and, in this respect, take into account the length of time in which they have already resided in that State."

44. The representative of the Federal Republic of Germany suggested to place this paragraph after article 53.

45. The representative of the USSR proposed to reword paragraph 1 as follows:

"In case of the death of the migrant worker or divorce or separation, the authorities of the State of employment should not take that opportunity to resort to the expulsion of family members."

46. Speaking on the Italian proposal, the representative of Norway said that he could not accept that text because it could be interpreted as allowing family members who were not in the State of employment at the time of the death or divorce of the migrant worker to enter the State of employment afterwards.

47. The representative of Egypt stated that, in the view of his delegation, there was an obligation imposed upon the States of employment towards the families of the migrant worker. In respect of paragraph 2, he suggested the deletion of the words "favourably consider" and also of the last two lines. Paragraph 2 would therefore read as follows:

"States of employment shall grant to these family members authorizations to stay at least during the remaining period of the migrant workers' relevant authorizations."

48. The representative of Australia said that, in the view of his delegation, the decision as to the length of time the families of migrant workers could remain in the State of employment must be left to the discretion of the State.

49. In an effort to reach a consensus, the Chairman proposed the following text:

"States of employment shall, in the case of death of a migrant worker, divorce or legal separation, according to applicable law, give favourable consideration to granting to the members of the family of the migrant worker, permission to stay, [taking especially into account the length of time in which they have already resided in the State of employment]. If such permission is not granted, they shall be given, before departure, a reasonable period of time to settle their affairs in the State of employment."

50. At its 9th meeting, on 6 June, the Working Group reverted to article 50. The representative of Algeria informed the Working Group that, despite the efforts made to reach consensus on article 50, her delegation continued to have problems with the text as it emerged after informal consultations.

51. Since the Working Group did not reach consensus and in view of the importance attached to the provisions of that article, the Chairman asked whether the Working Group would agree to defer consideration of the article to its next session.

52. The Working Group agreed to postpone consideration of article 50 to its next session.

Article 51

53. At its 1st and 3rd meetings, on 31 May and 1 June 1988, the Working Group resumed consideration of a text for article 51, which it had postponed to the present session, on the basis of article 51 of the first reading contained in document A/C.3/39/WG.1/WP.1, which reads as follows:

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

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

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

54. The Working Group also had before it a revised proposal for article 51 submitted by the Mediterranean and Scandinavian (MESCA) group of countries and other interested delegations which was introduced by the representative of Finland. The revised proposal read as follows:

"1. Migrant workers who in the State of employment are not allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence, by the mere fact of the termination of their remunerated activity prior to the expiration of the work permit, except where the authorization of residence is expressly limited to the activity for which the work permit has been granted.

"2. Such migrant workers shall be free to seek alternative employment, relief work and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work."

55. The representative of the Federal Republic of Germany recalled that the Working Group had already debated a text for article 51 extensively at its last session and, in that connection, stated that his delegation would be able to accept the wording contained in paragraph 372 of the Working Group's report on its 1987 fall session (A/C.3/42/6) with or without the Algerian amendment contained in paragraph 373 of that report.

56. The representative of Finland said that persons with a valid work permit should not be dependent merely on unemployment compensation in the case of loss of employment but should be allowed to seek retraining or other employment alternatives. In his view, that provision would thus cover a case not provided for in article 49, and therefore article 51 could not be considered as duplicating article 49.

57. The representative of the Federal Republic of Germany, in referring to the MESCA proposal for article 51, said that it concerned the effect of loss of employment on the migrant worker's residence permit whereas the text of article 51

adopted in first reading and the version contained in paragraph 372 of document A/C.3/42/6 concerned the effect of loss of employment on the work permit. In his country, the work permit was tied to a particular job, and if the migrant worker lost that job, he first lost his work permit and then, as a consequence, his residence permit.

58. The representative of Italy noted that article 51 should be considered in light of the capacity of the migrant worker to choose his job under article 49, the migrant worker was able freely to choose his remunerated activity while article 51 dealt with migrant workers who were not allowed to choose their activity freely and, therefore, if the migrant worker was to lose his job, he might be obliged to leave the country. He felt that the idea behind the text was that the work permit remained valid and that the migrant worker should be allowed to work and seek another job and not be tied to only one employer.

59. The representative of Morocco pointed out that while redrafting article 51 the sponsors had tried to avoid a repetition of article 49. However, she felt that in doing so the sponsors should provide sufficient protection in case of loss of employment and the repercussions thereof. She therefore drew the Working Group's attention to the need for maximum guarantee for the type of migrant worker dealt with in the article.

60. The representative of the United States stated that his delegation supported the thrust of the MESCA proposal for article 51, but urged that the phrase "expressly limited" be amended to read "expressly dependent upon" and that the phrase "for which the work permit has been granted" be amended to read "for which they were admitted".

61. The representative of Algeria stated that she shared the concern of the delegate of Morocco and that in her opinion the MESCA text was more restrictive than the wording adopted in article 49, paragraph 2. Consequently her delegation was not able to accept such a text.

62. The representative of India stated that his delegation supported the MESCA proposal.

63. The representative of the Netherlands stated that in his country work permits were attributable only to employers and not to employees. Therefore, it would be impossible to conceive of a situation where an employee would have a work permit and therefore it would be difficult for his delegation to accept a guarantee of security of employment if the migrant worker had already lost his job. However, he said that his delegation could endorse the MESCA proposal, on the understanding that his position would be duly reflected in the report.

64. At the 3rd meeting, on 1 June, and after informal consultations, the Chairman read out a text which had emerged as a result of those consultations, which reads as follows:

"Migrant workers who in the State of employment are not allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the termination of their remunerated activity prior to the expiration of the work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work."

65. The representative of the Federated Republic of Germany said that, since his delegation had opposed the adoption of article 49, paragraph 2, which limited the repercussions of the termination of remunerated activity on the validity of the authorization of residence in the case of migrant workers allowed freely to choose their remunerated activity, it could not accept the provision in the first sentence of article 51 which referred to the consequences of termination of remunerated activity for the validity of the authorization of residence in the case of migrant workers not allowed freely to choose their remunerated activity. His delegation could have accepted that provision if, as in the version of the first reading, it had referred to the consequences of termination of remunerated activity for the authorization to work. Where the second sentence of article 51 was concerned, the representative of the Federal Republic of Germany opposed its inclusion in the Convention, pointing out that in his delegation's view the question of participation of migrant workers in retraining activities in the event of termination of remunerated activity could be dealt with only in the context of the right to unemployment benefit, which was covered by other provisions of the Convention, such as article 27. While maintaining his objections, the representative of the Federal of Germany emphasized that if they were not shared by the other members of the Working Group, his delegation would not oppose the consensus and would be content with a reflection of its position in the report.

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

Article 51

Migrant workers who in the State of employment are not allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of the work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

Article 52

67. The Working Group considered a text for article 52 at its 1st to 8th meetings, from 31 May to 3 June 1988, on the basis of article 52 contained in document A/C.3/39/WG.I/WP.1 reading as follows:

"1. States of employment shall permit migrant workers in a [regular situation] [lawful status] freely to choose their employment [or other economic activity], subject only to such restrictions or conditions as are authorized by the following paragraphs of this article.

"2. States of employment may:

"(a) Restrict access by migrant workers to limited categories of employment, functions services or activities where this is necessary in the interests of the State;

"(b) Restrict free choice of employment [or other economic activity] in accordance with regulations governing the conditions of recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

"(c) Determine the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. In this connection, account shall be taken of the period during which the worker has already been employed or engaged in work on his own account.

"3. In the case of migrant workers in a [regular situation] [lawful status] whose permission to work is limited in time, States of employment may also:

"[In States of employment whose laws and regulations provide that migrant workers lawfully present may freely choose their employer or employment after a certain period of lawful employment, only the restrictions or conditions set forth in the following paragraphs of this article shall be applicable:

"1. A State of employment may:

"(a) Restrict access by migrant workers to certain categories of employment and certain geographical regions where this is provided by national laws and regulations;

"(b) Restrict free choice of employment in accordance with its laws and regulations concerning recognition of occupational qualifications acquired outside its territory. A State Party shall endeavour to provide for recognition of such qualifications, wherever possible;

"(c) Determine the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. In this connection, account shall be taken of the period during which the worker has already been employed or engaged to work on his own account.

"2. In the case of migrant workers lawfully in the territory of a State or employment whose permission to work is limited in time, a State of employment may in addition to the provisions of paragraph one:

"(a) Make the right of free choice of employment [or other economic activity] subject to the condition that the migrant worker has lawfully worked in its territory for a continuous period not exceeding two years;

"(b) Limit access by a migrant worker to employment [or other economic activity] in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has lawfully worked for a continuous period exceeding five years;

"(c) If the State of employment is a developing country, impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals.]"

"(a) Make the right of free choice of employment and employer subject to the condition that the migrant worker has lawfully worked in its territory continuously for a prescribed period;

"(b) Limit access by a migrant worker to employment in pursuance of a policy of granting priority to workers who are its nationals or who are assimilated to its nationals for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has lawfully worked continuously for a prescribed period;

"(c) If the State of employment is a developing country, impose such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals.]"

68. During the consideration of this article, the Working Group had before it a new text for article 52 submitted by the Mediterranean and Scandinavian (MESCA) group of countries, reading as follows:

"Migrant workers shall have the right freely to choose their remunerated activity, subject only to such restrictions or conditions as are set forth in the following paragraphs:

"1. For any category of migrant worker a State of employment may:

"(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

"(b) Restrict free choice of remunerated activity in accordance with its laws and regulations concerning recognition of occupational qualifications acquired outside its territory. States parties concerned shall endeavour to provide for recognition of such qualifications.

"2. For migrant workers whose permission to work is limited in time, a State of employment may also:

"(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a prescribed period not exceeding two years;

"(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a prescribed period not exceeding five years;

"(c) Impose, if that State is a developing country, such restrictions as may be called for by a policy aimed at meeting requirements for qualified manpower with its own nationals.

"3. States of employment shall provide the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. Account shall be taken of the period during which the worker has already been lawfully in the State of employment."

69. For the consideration of article 52, the Working Group agreed to proceed paragraph by paragraph.

70. Turning to subparagraph 1 (a) of the MESCA proposal, the representative of the Federal Republic of Germany suggested to insert the words "as well as to certain geographical regions in the State of employment" between the words "activities" and "where". He also suggested to add the words "and national regulations" after the words "national legislation". Regarding subparagraph (b), he proposed adding the words "whenever possible" after the words "such qualifications". He further proposed to reword the article as follows:

"1. Where the legislation or regulations of a State of employment provide that a migrant worker lawfully present in its territory may, after a prescribed period of remunerated activity, freely choose such an activity, the right to make such a choice may be subject only to the following restrictions or conditions:

"(a) Access by the migrant worker may be restricted by national legislation or regulations to certain categories of remunerated activity, as well as to certain geographical regions in the State of employment;

"(b) Free choice of remunerated activity may be restricted in accordance with the legislative provisions or regulations governing recognition of occupational qualifications acquired outside the territory of the State of employment; States parties to the Convention shall endeavour to recognize such qualifications wherever possible;

"(c) The authorization of a migrant worker, admitted to the State of employment in order to carry out a paid activity there, to engage in work on his own account may be made subject to conditions prescribed by national legislation and regulations;

"(d) Access by a migrant worker to a remunerated activity may be limited in pursuance of a policy of granting priority to nationals or to workers who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements.

"2. The right freely to choose a remunerated activity of a migrant worker lawfully present in the territory of the State of employment whose permission to work is limited in time may be subject to the following restrictions or conditions, in addition to the provisions of paragraph 1:

"(a) The exercise of the right freely to choose a remunerated activity or an employer may be made subject to the condition that the migrant worker has worked lawfully in the territory of the State of employment concerned continuously for a prescribed period;

"(b) The exercise of the right freely to choose a remunerated activity may, if the economic situation of the State of employment so requires, be made subject to such restrictions as may be called for by a policy aimed at meeting requirements for [qualified] manpower with nationals."

71. The representative of Italy stated that he could not see the need to include the words "national legislation" because those words, as used in international conventions, include the reference to "regulations". Therefore, he felt it was not necessary to make an express reference to such regulations, and otherwise the expression "laws and regulations" should be used.

72. In this respect the representative of Australia raised doubts about entitling all migrant workers to have the right freely to choose their remunerated activity in this article.

73. The representative of India stated that the term "national legislation" was wide and sufficient to cover the concern raised in this provision.

74. The representative of the USSR supported the opinion expressed by the representative of India. Turning to the amendment submitted by the Federal Republic of Germany, he supported the formulation of the introductory phrase of article 52 since it clearly stated that States may determine whether to grant or not the right freely to choose the remunerated activity. At the same time, he stated that the proposed addition of the words, "certain geographical regions" was not necessary.

75. The representative of the United States expressed the view that his delegation would not have any problem with subparagraphs 1, (a) and (b), as formulated in the MESCA proposal. However, the grounds for restriction of free choice of employment set forth in paragraph 1 were insufficient. He therefore proposed adding to paragraph 1 the following:

"(c) Impose such restrictions as may be necessary in pursuit of a policy aimed at meeting manpower requirements with its own nationals;

"(d) Restrict the period of time for which migrant workers are authorized to work."

He noted that both of these proposed subparagraphs are drawn from similar provisions in paragraph 2. He also proposed replacing the words "for any category of migrant worker" by the words "for any migrant worker", in order to clarify that this provision would be applicable to all migrant workers.

76. While recalling that this part of the Convention deals specifically with migrant workers and members of their families in a regular situation, as indicated by the title of the part, the representative of France expressed doubts as to the need to include the words "certain geographical regions in the State of employment".

77. With reference to the amendment submitted, the representative of Italy raised doubts as to whether the suggested inclusions in the article were necessary since the Working Group had considered earlier a text for article 37 containing provisions relating to the establishment of criteria governing the admission, duration of stay and type of employment in national legislation.

78. The representative of the United States shared the concerns of Australia. He expressed the view of his delegation that, while the issue of the treatment of migrant workers is an appropriate subject for this Convention, the grounds for their admission and expulsion are not. Thus, his delegation would prefer deletion of this article. If, however, the consensus of the Group was not to delete the article, the grounds for expulsion in article 56 should be expanded.

79. The representative of the Netherlands expressed his preference for the formulation of the article as proposed by MESCA without the additions which were proposed by the United States. The article as proposed by MESCA was aimed at ensuring the freedom of movement of the migrant workers in the labour market, once admitted. It did not contain any rights for migrant workers which were not yet admitted in the State of employment.

80. With regard to the amendment proposed by the United States, the representative of Finland stressed that a State should be free to establish its national immigration policy. However, when a migrant worker has been admitted and is in a regular situation, he should enjoy equality of treatment with nationals.

81. With regard to the suggestion to retain the term "national legislation", the representative of China expressed his preference for the term "national laws and regulations".

82. The representative of Norway stated that the wording of subparagraph 1 (a) was somewhat vague and that the formulation used in article 39 had been more to the point. However, as he understood that the Working Group shared his interpretation that the article would not limit the State of employment's right to restrict access by migrant workers to certain geographical regions, he could accept the proposed wording.

83. The representative of the Netherlands stated that he would have preferred, in subparagraph 1 (a), where it reads "necessary in the interests of this State", a more specific wording reading: "necessary in the interests of national security or public safety and public order (ordre public)". However, since this did not meet with enough support, he agreed to withdraw his suggestion.

84. While objecting to the amendment proposed by the United States, the representative of Morocco questioned the need to retain the introductory phrase of the proposed article, which stipulated that migrant workers had the right freely to choose their remunerated activity in the State of employment, but which was then followed by a whole series of restrictions. With regard to the introductory phrase of paragraph 1, she proposed replacing it by the words "For any category of migrant workers who have the right freely to choose their remunerated activity". Regarding subparagraph (b), she proposed that, in the French text, the words "d'effectuer de telles reconnaissances de qualifications" should be replaced by "d'assurer la reconnaissance de telles qualifications".

85. The representative of the USSR stated that his delegation was prepared to join the consensus with the understanding that article 52 be considered in the context of article 51.

86. After a lengthy discussion, the Working Group agreed to take up paragraph 1 in informal consultations.

87. At its 5th meeting, on 2 June, the Working Group adopted paragraph 1 of article 52, reading as follows:

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions:

88. Turning to paragraph 2, the representative of the United States proposed rewording subparagraphs 2 (b) and (c) to read as follows:

"(b) Impose such restrictions as may be necessary in pursuit of a policy aimed at meeting manpower requirements with its own nationals;

"(c) Restrict the period of time for which migrant workers are authorized to work."

89. The representative of Canada, while stating that his delegation could support the thrust of paragraph 2, drew the Working Group's attention to the different policies established in his national system between permanent resident workers and migrant workers admitted for a defined period of time.

90. The representative of the Federal Republic of Germany objected to any reference to a prescribed period. He proposed deletion of the words "not exceeding two years" in subparagraph (2) (a). He also proposed deletion of the word

"qualified" in subparagraph (2) (c), as well as the words "and vice versa" and the last sentence in paragraph 3. As to the rest of paragraph 2, he drew attention to the proposal he had made when article 52 had first been taken up.

91. Referring to the proposal by the Federal Republic of Germany to amend paragraph (2) (c) in such a way as to avoid singling out the developing countries, making the text applicable to any country and its economic situation, the representative of Morocco urged the representative of the Federal Republic of Germany not to insist on his amendment, since it would be inconceivable to put developing countries on the same footing as developed countries when even the International Covenant on Economic, Social and Cultural Rights contained a provision protecting developing countries.

92. The representative of Norway, while expressing his support for the suggestion made by the representative of the Federal Republic of Germany on the question of a time-limit, stated that the limit accepted in Norway is three years. Thus his delegation could not accept a time-limit which would later be a drawback.

93. With reference to the words "permission to work", the representative of the Netherlands stated that this expression was to be interpreted in a broad sense, bearing in mind that in his country a work permit was attributed to the employer and not to the employee. He suggested to replace the words "for a prescribed period not exceeding two years" by the words "for a period not exceeding three years".

94. The representative of the United States stated that he shared the concerns expressed by the representative of the Federal Republic of Germany as contained in paragraph 90 of the present report since, from his delegation's perspective, any time-limit would cause problems. He requested a clarification on what the authors meant by "persons who are assimilated to them" in subparagraph 2 (b).

95. The representative of Australia stated that he also had difficulties with the notion of specific time periods.

96. Turning to the expression "prescribed period", the representative of Italy stated that it was used to state a principle. But if a limited time period is given, then the provision would go beyond merely stating a principle.

97. The representative of France noted that the Working Group was getting closer to a wording more acceptable to his delegation. However, in the view of his delegation, the provisions of subparagraph 2 (a) should concern only migrant workers who are admitted in a country for a limited time and not those migrant workers admitted who are almost like permanent resident workers.

98. In view of the fact that there were certain similarities between the proposed article 52 and some of the standards adopted by ILO, the Chairman invited the representative of the International Labour Office to explain the background of these standards. Referring to the discussion on the two-year limit proposed in subparagraph 2 (a) and the same limit already provided for in ILO Convention No. 143, article 14 (a), the representative of ILO quoted from General Assembly

resolution 41/120 of 4 December 1986, entitled "Setting international standards in the field of human rights", which reads as follows:

"The General Assembly,

"...

"4. Invites Member States and United Nations bodies to bear in mind the following guidelines in developing international instruments in the field of human rights; such instruments should, inter alia:

"(a) Be consistent with the existent body of international human rights law;"

He further drew attention to the concern expressed repeatedly in the Governing Body of the International Labour Office that the future United Nations convention should not set standards falling below those already in force in ILO. This would be the case if a time-limit of more than two years were adopted on second reading.

99. The representative of the Netherlands pointed out that ILO Convention No. 143 was ratified only by a small number of States and could therefore not be regarded as part of accepted international human rights law.

100. With reference to ILO Convention No. 143, the representative of Australia supported by the representative of the Federal Republic of Germany, stated that while the contribution of ILO to the International Convention would be very important, he could not accept that States which were not party to some ILO conventions could be considered bound by those conventions. He recalled that in the network of international human rights standards, the instruments comprising the International Bill of Rights were regarded as paramount.

101. The representative of Morocco expressed her support for the principles contained in the passage from the General Assembly resolution quoted by the representative of ILO. She stressed that, while a number of ILO instruments dealt with labour, in her study on the exploitation of labour through illicit and clandestine trafficking she had stated that, as regards migrant workers, there was a need to supplement ILO instruments by provisions relating specifically to the protection of human rights of migrant workers. She expressed surprise at the reactions aroused by the statement by the representative of ILO, given the positions taken by delegations at previous sessions.

102. After a lengthy discussion, the Working Group decided to take up paragraphs 2 and 3 in informal consultations with a view to reaching a consensus on a text.

103. At the 8th meeting, on 3 June, as a result of the informal consultations, the Working Group reached consensus on a text for paragraphs 2 and 3 of article 52 and for article 52 as a whole.

104. The representatives of Finland and Greece stated that, while accepting the consensus, their delegations felt that the time-limits of subparagraphs 2 (a) and (b) should have been mandatory and should not be interpreted in such a way that

/...

they would weaken standards already accepted in international instruments, notably in ILO. They should also not be implemented so as to restrict indefinitely the free choice of employment for documented migrant workers.

105. The representative of the Federal Republic of Germany said that his delegation opposed the last phrase of subparagraph 2 (a), since, in its view, that subparagraph should not contain a recommendation concerning the length of the period in question. He also reiterated that his delegation had requested that subparagraph 2 (b) should be incorporated into the first paragraph, without the last sentence of the subparagraph in question. With regard to paragraph 3, the representative of the Federal Republic of Germany requested that, if the text provisionally between brackets was retained, the words "and vice versa" and the second sentence of the paragraph should be deleted. However, he added that, in order not to stand in the way of a consensus, his delegation would be satisfied if its various objections to the provision in question were duly reflected in the report.

106. The representative of Yugoslavia stated that her delegation did not want to block consensus on this article, but wanted to state for the record its reservations on the first part of subparagraph 2 (b). In her opinion, discrimination in relation to national workers was evident and this derogated from the principle of equal treatment. Reference was also made to the category of "assimilated" migrant workers, which conveyed the idea of political and economic regionalism. She added that this article did not speak about conditions of employment, but about the free choice of remunerated activities.

107. The representative of the United States, supported by the representatives of Canada and Australia, agreed to join consensus on article 52 only on the specific understanding that, when the Working Group took up consideration of part V of the Convention, consensus would also be reached on an article 62 bis, which would provide that article 52 will not apply to "specified employed workers" as defined in article 2 (2), (g). His delegation reserved the right to return to article 52 should such consensus on article 62 bis not be reached.

108. The representative of Sweden stated that his delegation had joined the consensus on article 52 although his delegation had preferred the wording of article 52 (2) (a), as contained in the MESCA proposal, which was already laid down in ILO Convention No. 143. It was important that the present Convention did not undermine in any aspect the rules already adopted in international instruments on human rights or in the conventions adopted by ILO.

109. The Working Group adopted a text for article 52 in which paragraph 4 was kept in brackets pending a decision of the Working Group as to whether the provisions of the Convention would be applicable to self-employed workers.

110. The text of article 52 as adopted on second reading by the Working Group reads as follows:

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its laws and regulations concerning recognition of occupational qualifications acquired outside its territory. However, States parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

[4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.]

Article 53

111. At its 3rd, 8th and 9th meetings, on 1, 3 and 6 June 1988, the Working Group considered a text for article 53 on the basis of article 53 of the first reading contained in document A/C.3/39/WG.1/WP.1, which reads as follows:

"[1. The spouse and children of a migrant worker whose authorization of residence or admission is without limit of time shall be permitted free choice of employment [or other economic activity] under the same conditions as are applicable to the migrant worker in accordance with article 52.

"2. In respect of the spouse and children of any migrant worker admitted in accordance with article 45, the States parties to the present Convention shall pursue a policy aimed at granting priority in respect of employment [or other economic activity] over other workers who seek admission to the receiving country.]"

"[1. If specifically authorized by the State of employment, the spouse and children of a migrant worker lawfully present in the State of employment shall be permitted to engage in employment;

"2. In respect of the spouse and children of any migrant worker admitted in accordance with article 45, the States Parties to the present Convention shall, subject to national laws and regulations and applicable bilateral and multilateral agreements, consider granting priority in respect of employment over other workers who seek admission to the State of employment.]"

112. The Working Group also had before it a revised proposal for article 53, submitted by the Mediterranean and Scandinavian (MESCA) group of countries and other interested parties, which reads as follows:

"1. Members of the families of migrant workers whose authorization of residence or admission is without limit of time shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant workers in accordance with article 52.

"2. In respect to members of the families of migrant workers admitted in accordance with article 44, the States parties to the present Convention shall pursue a policy aimed at granting priority in respect of remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements."

113. The representative of Algeria stated that her delegation had difficulty with the phrase "whose authorization of residence or admission is without limit of time" in paragraph 1 because, in the case of many Algerian migrant workers, although their work permits were limited in time, they were automatically renewable.

114. In an attempt to solve the problem of the representative of Algeria, the Chairman suggested to add the words "or is automatically renewable" after the words "without limit of time".

115. The representative of France said he could accept the addition of the words "or is automatically renewable", which would make that paragraph applicable to certain categories of workers in his country. He added that, in his view, the reference to article 52 concerned only the first paragraph of that article.

116. The representative of the Federal Republic of Germany stated that, in the view of his delegation, paragraph 1 of article 53 should be deleted. However, he would not block the Working Group's consensus.

117. The representative of the United States suggested that the first phrase of the English text should read "Members of a migrant worker's family whose authorization ..." rather than "Members of the family of migrant workers whose ..."

118. At the same meeting, the Working Group adopted article 53, paragraph 1, reading as follows:

Article 53

1. Members of a migrant worker's family whose authorization of residence or admission is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52.

119. The Working Group then took up consideration of a text for article 53, paragraph 2.

120. The representative of Finland pointed out that the present wording of paragraph 2 would have the effect of excluding the children of migrant workers born in the State of employment and he proposed therefore to delete the reference to article 44 and the words "admitted in accordance with article 44".

121. The representative of the Federal Republic of Germany proposed to delete the words "shall pursue a policy aimed at granting" and to replace them with "shall consider the possibility of granting them" and to add the words "national legislation" after the words "subject to".

122. The representative of Australia said that paragraph 2 was asking Governments to give priority to family members of migrant workers coming to the State of employment to work temporarily over migrant workers coming to the State of employment to settle permanently.

123. The representatives of the United States and Canada supported the comments made by the Australian delegation. The representative of the United States proposed to insert the words "referred to in paragraph 1 above" after the words "migrant workers" in the first line of paragraph 2.

124. The representative of Algeria supported the Finnish proposal to delete the words "admitted in accordance with article 44", which would risk placing the

children of migrant workers born in the State of employment in a highly uncertain situation concerning the choice of a remunerated activity. She also considered that that provision might involve discrimination between children born in the State of employment and those who might arrive with their family.

125. The Chairman proposed to replace the words "admitted in accordance with article 44" in paragraph 2, with the words "who can freely choose their remunerated activities", as appears in article 52, paragraph 2.

126. The representative of Cape Verde proposed to modify the proposal made by the representative of the United States to add the words "referred to in paragraph 1 above" by preceding it with the word "not", to read: "not referred to in paragraph 1 above", and to place these words after the words "other workers". He then suggested that the words "in respect of remunerated activity" were too vague and should be replaced by the words "in obtaining a remunerated activity".

127. The representative of Finland said that, in the view of his delegation, children of migrant workers already living in the State of employment could not be included in the term "family reunion" and he therefore opposed retaining the reference to article 44 and to linking article 53 with article 52, paragraph 2.

128. The representative of Australia supported the suggestion made by the representative of the United States to link the reference to "members of the family of migrant workers" in paragraph 2, with the reference made in paragraph 1 to such family members. He then proposed to replace the words "pursue a policy aimed at" with "consider".

129. Speaking on the proposal to delete the reference to article 44, the representative of Cape Verde stated that his delegation would prefer to retain this reference but suggested that, if the delegations of Algeria and Finland objected to its inclusion, the words "or born in the territory of the State of employment" could be added after the words "in accordance with article 44". He agreed with other delegations who felt that persons admitted under article 44 should not have priority over a person admitted to live in the State of employment without a limitation of time.

130. At its 9th meeting, on 6 June, the Working Group resumed consideration of a text for article 53, paragraph 2. The Chairman read out a text for this paragraph which emerged as a result of informal consultations, reading as follows:

"In respect to members of the migrant workers' families who are permitted freely to choose their remunerated activity, States parties to the present Convention shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements."

131. In speaking on the proposal read out by the Chairman, the representative of the Federal Republic of Germany said that he could then withdraw his objections to the paragraph, since that text made it clear that family members should have the

authorization freely to choose their remunerated activity. On the other hand, his delegation maintained its proposal to include the reference to national legislation after the words "subject to", without, however, opposing the consensus.

132. The representative of India stated that paragraph 2 of article 53, as amended, gives the impression that it is not subject to the limitations of article 52, while paragraph 1 of article 53 is subject to limitations spelt out in article 52. In the view of his delegation, paragraph 2 of article 53 is also subject to such limitations.

133. The representative of the United States, supported by the representative of France, agreed to join the consensus on article 53, paragraph 2, despite substantial concerns over the application of these provisions to certain categories of migrant workers and members of their families, particularly specified employment workers. Should these concerns not be resolved in the discussion on part V of the Convention, his delegation reserved the right to return to these points.

134. The representative of Algeria said that while her delegation had not wished to block the consensus on article 53, and had therefore agreed to join it, it would have preferred a clearer wording of paragraph 2 implying that the State of employment would pursue a policy aimed at granting family members of a migrant worker covered by the provision priority over migrant workers seeking admission.

135. The representative of the USSR pointed out that his delegation was willing to join the consensus on the understanding that article 53 be viewed within the context of articles 51 and 52 and, therefore, if the State of employment does not give the migrant worker the right freely to choose his remunerated activity, this would be applicable to his family members.

136. The representative of Australia, supporting the comments made by the representative of the United States, stated that article 53 as adopted was not practicable in the Australian context since the Government could not intervene as closely in the labour recruitment process in Australia as would be required to give full effect to this provision.

137. At the request of several delegations, the Working Group agreed that, when it reached the consideration of specified employment workers in part V of the Convention, it would then revert to article 53, paragraph 2, if need be.

138. The representative of France stated that in his delegation's view the family members referred to in the article as a whole were those who were born and had remained in the territory of the State of employment at the required age as well as those who already had authorization of residence, as members of the migrant worker's family, on entering the territory of the State of employment.

139. After a brief discussion, the Working Group adopted a text for article 53, paragraph 2, which reads as follows:

Article 53

2. In respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States parties to the present Convention shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

140. The text of article 53, as adopted on second reading, reads as follows:

Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52.

2. In respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States parties to the present Convention shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

Article 54

141. The Working Group took up consideration of a text for article 54 at its 9th meeting, on 6 June 1988, on the basis of article 54 of the first reading contained in document A/C.3/39/WG.1/WP.1, which reads as follows:

"[Without prejudice to the terms of their authorization of residence, migrant workers as defined in article 2 (1) (a) who are [in a regular situation] [lawful status] shall, in addition to the rights provided for in articles 25 and 44, enjoy equality of treatment with nationals of the receiving State in respect of

"(a) Security of employment;

"(b) Access to relief work organized by a public authority;

"(c) Subject to any conditions or restrictions imposed in pursuance of article 52, the provision of alternative employment in the event of loss of work; in that event they shall be given priority over other workers who seek admission to the receiving country.]"

142. The Working Group also had before it a revised proposal for article 54, submitted by the Mediterranean and Scandinavian (MESCA) group of countries and other interested parties, which reads as follows:

"Without prejudice to the terms of their authorization of residence, migrant workers shall, in addition to the rights provided for in articles 25 and 43, enjoy equality of treatment with nationals of the State of employment in respect of:

"(a) Security of employment;

"(b) Unemployment benefits;

"(c) Access to relief work organized by a public authority;

"(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity subject to article 52."

143. At the same meeting, the Chairman read out a text for article 54 which had emerged as a result of informal consultations, reading as follows:

"Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

"(a) Protection against dismissal;

"(b) Unemployment benefits;

"(c) Access to work schemes organized by a public authority;

"(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity subject to article 52."

144. Speaking on subparagraph (c), the representative of Canada, supported by the representative of Yugoslavia, suggested to use the same language as in article 51 and to insert the word "public" between the words "access to" and "work schemes", to read: "access to public work schemes".

145. In this connection, the representative of France however said that, in the view of his delegation, subparagraph (c) should only provide for access to an activity trying to combat unemployment.

146. The representative of Italy suggested that the Working Group specify its intention that subparagraph (c) should mean public work schemes intended to combat unemployment.

147. In order to arrive at a consensus, the Chairman suggested to reword subparagraph (c) to read: "access to public work schemes intended to combat unemployment".

148. The representative of Algeria considered that the term "public work schemes" concerned a specific sector of activities linked with construction and was

therefore inappropriate, since the purpose of the article was to ensure equality of treatment between migrant workers and nationals of the State of employment with regard to access to special retraining activities designed to combat unemployment.

149. The representative of France suggested the following formulation of subparagraph (c) for the French text: "participation des programmes public destinés à lutter contre le chômage".

150. The representative of the Federal Republic of Germany, supported by the representatives of Canada and the Netherlands, said that his delegation could accept subparagraph (b) with, in the introductory phrase to article 54, the mention of article 27, which should be interpreted to mean that the reference to unemployment benefits in that subparagraph was significant only for those countries in which such benefits were not part of the social security system. On the other hand, his delegation could not accept subparagraphs (c) and (d); however, in order not to impede the consensus, it would be satisfied if its position were reflected in the report. The representative of Canada agreed to join the consensus on article 54 on the understanding that when the Working Group considered part V of the Convention, consensus would also be reached on article 62 bis, providing that subparagraph 54 (d) would not apply to specified employment workers.

151. The representative of Australia said that his delegation interpreted article 54 as not augmenting or modifying the rights already afforded to a migrant worker under article 25, paragraph 1, concerning equality of treatment in respect of the employment relationship, or the rights already afforded to a migrant worker under article 27, paragraph 1, concerning equality of treatment in respect of social security, subject to applicable legislation and international agreements. The representative of Australia also endorsed the positions of Canada on the need for drafting discipline in respect of subparagraph (c) and to revert back to subparagraph (d) in the consideration of part V of the Convention.

152. The delegation of the United States agreed to join in the consensus on article 54 despite substantial concerns over the application of its provisions to certain categories of migrant workers and members of their families, particularly, specified employment workers, but reserved the right to return to these points in the discussion of part V of the Convention.

153. The representative of Norway said that his delegation endorsed the statement made by the delegation of the Federal Republic of Germany, also supported by the Netherlands, France and the United States, that when unemployment benefits are a part of the national social security system, article 27, paragraph 1, with its wording "in the State of employment", would apply and not article 54.

154. The delegations of Finland and Algeria accepted the formulation of article 54 on the understanding that the participation in public work schemes may also imply work in the private sector.

155. At the same meeting, article 54, as a whole, was adopted, with the option to reconsider the text when the Working Group would deal with part V of the Convention on specified employment workers. The text adopted on second reading is as follows:

Article 54

Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

- (a) Protection against dismissal;
- (b) Unemployment benefits;
- (c) Access to public work schemes intended to combat unemployment;
- (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity subject to article 52.

Article 55

156. The Working Group considered a text for article 55 at its 2nd, 5th and 6th meetings, on 31 May and 2 June 1988, on the basis of article 55 contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"[Migrant workers as defined in article 2 (1) (b) who are in [a regular situation] [lawful status] shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession.]"

"[Migrant workers as defined in article 2 (1) (b), who are in a regular situation, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of their occupation or profession, except as provided otherwise by the laws and regulations of the State of employment.]"

157. The Working Group also had before it a revised proposal for article 55, submitted by the Mediterranean and Scandinavian (MESCA) group of countries and other interested parties, which reads as follows:

"Migrant workers who have been granted permission to work in a defined profession or occupation shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that occupation or profession."

158. At the 2nd meeting, a number of delegations suggested to delete article 55 because, in their view, its provisions were covered under part III, article 25, of the Convention. Other delegations, however, preferred to retain article 55 which, in their view, supplemented and broadened the provisions of article 25.

159. The Working Group resumed consideration of a text for article 55 at its 5th meeting.

160. The Chairman drew the attention of the Working Group to the provisions of article 55 which, he said, referred to the permission to work in a specified field or in a specific occupation, and not just to the permission to work. Therefore, in his view, its inclusion in the Convention was necessary.

161. The representative of Cape Verde stated that, in his view, there was no difference between articles 54 and 55, both of which dealt with the guarantee of the equality of treatment of the migrant worker. He further stated that article 55 refers to a migrant worker in a defined profession or occupation and therefore is more restrictive than the provisions contained in article 53.

162. The Chairman pointed out that article 52 concerned the right to the freedom to choose a job while article 55 provided for equality of treatment and supplemented article 52.

163. The representative of Canada stated that, in his view, article 55 extended the provision for the equality of treatment beyond that covered in article 25.

164. The representative of the United States raised the question of whether the idea of equality of treatment contained in article 55 included the right of the migrant worker to change jobs within his profession and to choose another job freely once he had been admitted for a particular one. He noted that to some extent certain professions are, and in the view of his Government should remain, self-regulating. In such cases, Governments may be unable to enforce equality of treatment between nationals and migrant workers.

165. The Chairman stressed that the purpose of this article was not to establish the capacity of the migrant worker to change professions, and that the leeway of a foreign worker is determined by the type of authorization he receives from the State of employment to enter the country.

166. The representative of Italy stated that, in his view, the equality of treatment was relevant to each specific profession.

167. The representative of the Federal Republic of Germany pointed out that, whereas the text of article 55 in document A/C.3/39/WG.1/WP.1 referred to workers exercising an activity on their own account, that distinction was missing from the new MESCA proposal. In his view, it would be better to state clearly which category of migrant workers was intended by that provision. He proposed that the words "who have been granted" should be replaced by "to the extent that they have been granted" and that the last phrase in the text of the right-hand column of paragraph 1 of document A/C.3/39/WG.1/WP.1, beginning with the words "except as provided otherwise", should be retained.

168. The representative of Morocco stated that, in her view, article 55 was discriminatory in comparison to article 25 and that, according to article 55, if a migrant worker was not recruited for a specific job, he would not be entitled to equality of treatment. This would give, she said, a special status to qualified, skilled workers and it would not be fair to provide for the equality of treatment only for this category of workers and not for labourers also.

169. The representative of Australia noted that his delegation would be concerned if the issue raised by the United States in paragraph 164 above would prove well founded.

170. The representative of China stated that his delegation was able to accept article 55 as contained in the new MESCA proposal.

171. In referring to the issue raised by the delegation of the United States as to whether the State will be obliged to ensure that professional associations in the State of employment provide equality of treatment to migrant worker, the representative of the USSR pointed out that if the State undertakes an international obligation, it will be incumbent upon that State to adopt measures to ensure that no discrimination is permitted, either by public or by private enterprises.

172. The Chairman pointed out that, apart from any participation by the private sector or professional associations in the implementation of the future Convention, it was obvious that the States parties to the Convention would be responsible for ensuring its proper implementation, as was true of all treaties.

173. The representative of Nigeria stated that, in the view of her delegation, article 55 was not discriminatory and that she could support this article. She noted that, in Nigeria, the Government ensured that migrant workers were treated on an equal basis with nationals, whether they are engaged in governmental projects or in private enterprise.

174. In an effort to accommodate those delegations who had difficulty with the interpretation of article 55, and to stress that the provisions of this article did not deal exclusively with highly skilled workers, the representative of Finland proposed to revise the MESCA text to read as follows:

"Migrant workers shall, in the exercise of their occupation or profession, be entitled to equality of treatment with nationals of the State of employment exercising the same occupation or profession".

175. The representative of Finland explained that the reference to "granted permission" and "defined profession or occupation" had been deleted so that the article would not be interpreted as being relevant only for highly qualified workers but also for the equality of treatment of all migrant workers with regular status in the exercise of their work. He added that the last line of his proposal was to clarify that according to this article, the migrant worker would not have the right to have another job.

176. The Chairman drew the Working Group's attention to the fact that article 25 refers to employees and not to those who may exercise activities or professions on an independent basis. Article 25, he said, refers to conditions of employment and article 55 refers to activities carried out independently.

177. While expressing the appreciation of his delegation to the representative of Finland for his clarification, the representative of the USSR said, however, that

his delegation had doubts with respect to part of the text being deleted in the Finnish proposal. His delegation would prefer to retain the words "migrant workers who have been granted permission to work". He proposed to retain the MESCA proposal and to replace the words "occupation or profession" in the first and last lines by the words "remunerated activity".

178. The representative of the Netherlands, supported by the representative of the USSR, stated that, in the opinion of his delegation, the inclusion of article 55 in the Convention should in no way prejudice the inclusion in the Convention of the category of independent workers.

179. The representative of Nigeria stated that, in the view of her delegation, if the words "who have been given permission to work in a defined profession or occupation" and "in the exercise of that occupation or profession" were deleted, the resulting article would be a repetition of article 25.

180. The representative of the United States expressed the concern of his delegation that this article as proposed would permit migrant workers to change jobs in the State of employment. Speaking on the MESCA proposal, he proposed to add at the end of the paragraph the words "subject to the terms of the migrant worker's admission", in order to clarify that if a migrant worker was admitted temporarily to a State of employment for a specific job, he would not be permitted to change jobs.

181. At its 6th meeting, on 2 June, the Working Group continued consideration of article 55. The Chairman read out and put before the Working Group the following text which had emerged from further informal consultations:

"Migrant workers who have been granted permission to work in a remunerated activity shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity, subject to the terms of the migrant worker's admission."

182. After a brief discussion concerning the addition of the phrase "subject to ... admission" proposed by the United States, the representative of Morocco said that, in her view, that amendment was not essential, since workers were granted permission to work by the State, and such permission was granted only in accordance with the terms of their admission. The representative of Algeria shared that view.

183. The representative of Italy suggested, as a compromise, to add, after the word "activity", the phrase "and subject to the conditions attached to such permission" and to end the article after the words "exercise of that remunerated activity".

184. The representative of the United States expressed the opinion that his concern was justified and thus he had proposed to add that phrase at the end of the article. However, in a spirit of compromise, he could accept the suggestion made by Italy.

185. At the same meeting, the representative of India proposed that the word "independent" be added before the expression "remunerated activity" at the beginning of the text and the words "right to" be added before "remunerated activity" at the end of the text, as well as other amendments, so that article 55 would read as follows:

"Migrant workers who have been granted permission to engage in an independent remunerated activity shall be entitled to equality of treatment with nationals of the State of employment in the exercise of the right to remunerated activity".

186. Several delegations expressed their support for the compromise text put forward by Italy. The representative of the Federal Republic of Germany said that he would not stop consensus within the Working Group, but he wished to reserve his position for the report.

187. At the same meeting the Working Group adopted article 55 reading as follows:

Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

Article 56

188. The Working Group considered article 56 at its 6th to 13th meetings, from 2 to 8 June 1988. The Working Group had before it the text as it had emerged from the first reading as well as the proposal of the Mediterranean and Scandinavian (MESCA) groups of countries. The text as adopted at the first reading, contained in document A/C.3/39/WG.1/WP.1, reads as follows:

"[1. Migrant workers and members of their families in {a regular situation} [lawful status] may not be expelled from a receiving State except:

"(a) For reasons of national security, public order (ordre public), or morals;

"(b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;

"(c) If a condition essential to the issue or validity of their authorization of residence or work permit is not fulfilled;

"[(d) In accordance with the applicable laws and regulations of the State of employment.]

"2. [In accordance with applicable laws] any such expulsion shall be subject to the procedural safeguards provided for in part II of this Convention.

"[3. Before any expulsion or deportation be carried out, all fundamental rights of migrant workers must be legally safeguarded.]]"

189. The text proposed by the MESCA group reads as follows:

"1. Migrant workers and members of their families may not be expelled from a State of employment except:

"(a) For reasons of national security or public order (ordre public);

"(b) If they refuse, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for them by an official medical authority with a view to the protection of public health;

"(c) If a condition essential to the issue of validity of their authorization of residence or work permit is not fulfilled.

"2. Any such expulsion shall be subject to the safeguards established in part III of this Convention."

190. Referring to the MESCA text, the Chairman explained that subparagraph 1 (d) of the original text as it had emerged from first reading had been omitted because it seemed that reasons for expulsion should be restricted in this part of the Convention. Paragraph 3 had been omitted as redundant.

191. A general exchange of views on the whole article took place at the 6th meeting, on 2 June. Some delegations noted that they favoured the inclusion of the term "morals" in subparagraph 1 (a). The delegations of the Federal Republic of Germany, the USSR, the United States of America and Sweden favoured the inclusion of language similar to that of article 22, paragraph 2, of the International Covenant on Civil and Political Rights. The United States, supported by Canada, pointed out that "public health" should also be included.

192. The representative of Greece, explaining the MESCA proposal in subparagraph 1 (a), stated that the expression "national security or public order (ordre public)" had also been included in article 26 already adopted. The MESCA group had found it difficult to define the term "morals". The representatives of the Netherlands and India expressed support for the MESCA proposal as it stood.

193. The representative of Algeria said that she had the strongest objections to the inclusion of the terms "public morals" and "public health" as grounds for expulsion. In the former case, the concept of public morality or morals was ill-defined and relative, and could result in a great many abuses or provide a pretext for expulsion. In the case of public health, her delegation felt, for obvious reasons, that the illness of a migrant worker should in no case be used against him, and therefore should not constitute grounds for expulsion. She also

wished to point out that the purpose of the article was to limit cases of expulsion to precise situations which should be clearly defined, and that the Working Group should therefore avoid creating the opposite effect from that intended, which was to protect the right of migrant workers not to be expelled.

194. The representative of Italy pointed out that article 22 of the International Covenant on Civil and Political Rights, which included the concept of "morals", referred to a different situation from the one envisaged in article 56 of the Convention. The representative of the Netherlands stated that since the concept of "morals" had been omitted in article 26 already adopted, it should also be omitted in article 56 for the sake of consistency. He also expressed his serious objections to the inclusion of "public health" in subparagraph 1 (a), saying that ill health should not be a reason for expulsion.

195. The representative of Norway stated that he could not accept subparagraph 1 (a) as it stood because Norwegian legislation accepted no restrictions regarding the expulsion of criminals. The representative of China proposed that subparagraph 1 (a) be rephrased to include the phrase "for reasons of violating the law" but exclude morality. The Chairman stated that the MESCA group believed that the term "public order" covered infractions of criminal law.

196. The representative of India proposed that the concept of safeguards contained in paragraph 2 should be integrated in paragraph 1 and suggested the following wording for the introductory phrase of paragraph 1:

"Subject to the safeguards established in part III of this Convention, migrant workers and members of their families may be expelled from a State of employment:"

197. The representative of France suggested that the words "in a regular situation" be added in the introductory phrase of paragraph 1. He also suggested that, in subparagraph 1 (c), the words "no longer" be added before the word "fulfilled".

198. The Working Group continued consideration of article 56 at its 7th meeting, on 3 June. The representative of Greece said that after informal consultations with some delegations, the following text was proposed for the introductory phrase of article 56:

"Subject to the safeguards of this part of the Convention, migrant workers and members of their families may be expelled from a State of employment only:"

199. The Chairman suggested to amend this text by rephrasing the sentence after the word "expelled" as follows:

"only by a decision reached in accordance with law and only for the following reasons:"

200. The representative of Australia called to the attention of the Working Group that the right of States to expel aliens was limited in international law by very few international instruments such as the Convention relating to the Status of Refugees and the European Social Charter. He questioned therefore whether article 56 should be included in the Convention at all and suggested that if it was included, then the language of the European Social Charter rather than that of the Convention relating to the Status of Refugees should be followed. The representative of the United States shared the concerns of Australia and stated that the grounds for expulsion in article 56 should be expanded.

201. The Chairman stated that the concept of refugees was different from that of migrant workers. The representative of Italy pointed out that migrant workers become part of the community where they live and that there are clear humanitarian considerations regarding their expulsion. The representative of the Netherlands felt that subparagraphs 1 (a), (b) and (c) of the MESCA proposal already gave broad reasons for expulsion.

202. The Chairman read out the following text for the introductory sentence of paragraph 1 as it seemed to be emerging from the discussions:

"Migrant workers and members of their families referred to in this part of the Convention may be expelled from a State of employment, subject to the safeguards established in part III of the Convention, only for the following reasons:"

203. At the same meeting, the representative of Australia suggested that the following be included among the proposals, for paragraph 1:

"Migrant workers and members of their families may not be expelled unless they endanger national security or offend public interest or morality."

204. The representative of the USSR said that the major difficulty with article 56 was that it dealt with a wide range of people. The article should be balanced and it should include reference to national security, public order, public health and flagrant violation of the law of the State of employment. Furthermore, in order to achieve compromise, a provision might be included in this article to the effect that while a decision on expulsion was taken, account should be taken of humanitarian reasons. The representatives of Sweden and Canada agreed that humanitarian considerations should be mentioned.

205. At its 7th meeting, on 3 June, the Working Group adopted on second reading the introductory paragraph of article 56 which reads as follows:

Migrant workers and members of their families referred to in this part of the Convention may be expelled from a State of employment, subject to the safeguards established in part III of the Convention, only for the following reasons:

206. The Working Group then further turned its attention to subparagraph 1 (a). The representative of the Federal Republic of Germany stated that articles 12 and 22, paragraph 2, of the International Covenant on Civil and Political Rights should be the basis for subparagraph 1 (a); this should also include public morals. The representative of Norway, reiterating an earlier statement, suggested that wording along the lines of the following should be added in subparagraph 1 (a):

"... or if, in the State of employment or in any other country, they have committed an offence which under the laws of the State of employment could be punished by imprisonment."

207. The representative of the USSR agreed with the views of the representatives of China and Norway that violation of laws should be reason for expulsion, but mentioned that this should cover only serious violations and not minor offences.

208. At its 10th meeting, on 6 June, the Working Group continued consideration of subparagraph 1 (a). The Chairman read out and put before the Working Group the following text, which had emerged from informal consultations:

"(a) For reasons of national security or public order (ordre public) including conviction for a serious criminal offence;"

209. The representative of Sweden stated that his delegation considered that safeguards against arbitrary expulsions and migrant workers were important. However, his delegation was hesitant to support the approach taken in the proposals for this article. He reiterated that anti-social behaviour such as prostitution or drug addiction would be considered as justified reasons for expulsion if an alien had resided for a short time in Sweden and had not been integrated into the society. Such behaviour was not necessarily penalized under Swedish law. The notion ordre public was interpreted narrowly in Sweden and would probably neither cover acts such as the above-mentioned, nor necessarily conviction for criminal offences, which could also be grounds for expulsion. Under the European Social Charter, a migrant worker might be expelled for reasons of national security, public interest or morality, and under the International Covenant on Civil and Political Rights, certain rights are subjected to restrictions, inter alia, for public order and morals. The representative of Sweden pointed out that the notion of morals was clearly different from that of public order. If the notion of morals was not included in article 56, the possibilities for States parties to expel aliens for reasons of criminal activities or anti-social behaviour would be limited. Therefore, his delegation insisted on the importance of the inclusion of this notion of the MESCA proposal for subparagraph 1 (a) was the basis for an adopted text.

210. The representative of the Netherlands reiterated his view that the term "morals" was covered by the larger notion of "public order". The same was true for the concept of "crime", he stated.

211. The representative of Norway suggested the addition to the text read out by the Chairman of the phrase "which under the law of the State of employment would be punishable by law".

212. Referring to the text read out by the Chairman, the representative of the USSR stated that in the view of his delegation, the term "morals" is not covered by the notion of public order. He expressed the view that it was not necessary to include the condition of conviction for an offence before expulsion could take place. This should also be possible through an administrative decision. Regarding public health, two situations had to be envisaged: the first covered persons who contracted a disease while in the State of employment, and the second, persons who already had a disease before entering the State of employment. Regarding the latter category, subparagraph (c) of the MESCA proposal might be interpreted as giving the right to the State of employment to expel such persons who had not declared that they had the disease before entering.

213. The representative of France expressed disagreement with the idea of expelling migrant workers after conviction, since that would result in a double standard concerning the application of criminal law. It would in fact be too easy a solution for a migrant worker who had committed an offence to be expelled without facing the punishment provided by law. The representative then proposed the inclusion of the following phrase in subparagraph (a):

"and after having served the sentence resulting from a conviction for serious criminal offences".

214. The representative of the Federal Republic of Germany said that reference to public morals should indeed be made in article 56, since that concept was included in international conventions in connection with expulsion. Regarding the reference to conviction for a crime and expulsion, he noted that several bilateral or regional treaties, including the European Social Charter, did not explicitly refer to conviction for a crime as grounds for the expulsion of a migrant worker, but that States parties to those treaties could resort to expulsion on such grounds without violating the treaties. He also suggested the inclusion of the following new subparagraph:

"States of origin or, where appropriate, the States referred to in article 22, paragraph 7, of the Convention shall be required not to oppose the return or, respectively, the entry into their territory of the persons referred to in this article."

215. Given the lack of consensus the representative of the United States reiterated his view that article 56 should be omitted altogether.

216. The representative of Morocco expressed her concern regarding what appeared to be a deviation from the spirit of the International Covenant on Civil and Political Rights. Her delegation would not accept a text that would fall short of article 13 of the Covenant. Regarding the concept of "public morals" she stated that it was difficult to interpret that term as it varied from country to country.

217. The representative of the USSR stated that article 56 went beyond article 13 of the International Covenant on Civil and Political Rights. While article 13 of the Covenant only states that a decision for expulsion should be taken according to national legislation, article 56 tends to limit the authority of the State. He

recalled his earlier proposal to omit article 56 or else adopt a general formulation.

218. As a result of informal consultations, the representative of Finland and Italy proposed the following text:

"Article 56

"Migrant workers and members of their families referred to in this part of the Convention may be expelled from a State of employment, subject to the safeguards established in part III of this Convention, only for reasons defined in the national legislation of that State.

"Expulsion shall not be resorted to as a means of depriving a migrant worker or a member of his family of the rights arising out of the authorization of residence and the work permit.

"In taking a decision to expel a migrant worker or a member of his family, account should be taken of humanitarian considerations and of the length of time the person concerned has already resided in the State of employment."

219. At the 11th meeting, on 7 June, the Chairman announced that despite further informal consultations no consensus had been reached on article 56. Reporting on those consultations, the Vice-Chairman said that no consensus existed on the reasons for expulsion. There was agreement, however, that there was reason to go beyond the International Covenants with regard to expulsion of documented migrant workers and thus reason to include article 56 in the Convention. In view of this situation, the Working Group decided to hold further informal consultations and to consider this article at its next session.

PART V

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

Article 57

220. The Working Group considered a text for article 57 at its 10th and 12th meetings on 6 and 7 June 1988, on the basis of article 57 contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"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 provision 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]."

221. At the 10th meeting, the Working Group had before it a new text for article 57 submitted by the Mediterranean and Scandinavian (MESCA) group of countries, reading as follows:

"1. The particular categories of migrant workers and members of their families specified below who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in part IV and in this part of the Convention according to the articles which refer to them hereunder, in addition to the rights set forth in part III of the Convention."

222. The representative of Finland drew the Working Group's attention to the fact that it was the intention of the sponsors of the text submitted by the MESCA group to include the second paragraph of the text contained in document A/C.3/39/WG.1/WP.1 in a subsequent part of the Convention, because of its general nature. This paragraph would therefore be deferred to a later session of the group. Paragraph 2 reads as follows:

"2. The provision 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]."

223. The representative of the Federal Republic of Germany stated that there were at least eight categories of migrant workers, including self-employed workers, to whom all these provisions may not be applicable. He therefore proposed to revise the article as follows:

"1. The provisions of articles 8 to 24 of the present Convention shall apply also to migrant workers in the particular categories referred to in article 2, paragraph 2, as well as to members of their families present in the territory of the State concerned.

"2. The provisions of articles 25 to 35, as well as those of part IV of the present Convention, shall apply to migrant workers in the categories mentioned in paragraph 1 and to members of their families to the extent that the specific status of these migrant workers permits such application under the applicable legislation."

224. The representative of the Federal Republic of Germany added, however, that if the Working Group did not wish to accept this proposal, his delegation would not oppose the consensus, provided that its position was reflected in the report.

225. The representative of Italy stressed that the provision of article 57 address specific rights concerning particular categories of migrant workers as indicated by the title of this part of the Convention. He proposed to delete the word "below" in the MESCA proposal and to reword the beginning of paragraph 1 as follows:

"1. The particular categories of migrant workers and members of their families specified in this part of the Convention shall enjoy the rights ..."

226. The representative of the United States proposed revising the first paragraph of the MESCA proposal to read as follows:

"1. The particular categories of migrant workers and members of their families specified in this part of the Convention who are documented or in a regular situation shall enjoy the rights set forth in parts III and IV of the Convention, except as modified below."

227. The representative of Yugoslavia stated that her delegation supported the MESCA proposal as amended by the delegation of the United States, on the understanding that paragraph 2 should be taken in part VII of the draft Convention.

228. The representative of the Soviet Union and various delegations expressed their support for a formulation providing that these special categories of migrant workers shall enjoy the provisions of parts III and IV, with the exception of those that would be specified.

229. The representative of Finland proposed adding a reference to part II, so that the proposal would read:

"... shall enjoy the provisions of parts II, III and IV ..."

230. The Chairman pointed out that there was no need to mention part II as it is a non-discriminatory clause which is applicable to all migrant workers.

231. As delegations agreed with the Chairman's clarification, the Working Group adopted article 57 as amended, without the second paragraph, which it decided to consider in the context of article 77.

232. At its 12th meeting, the Working Group adopted on second reading a text for article 57 reading as follows:

Article 57

The particular categories of migrant workers and members of their families specified in this part of the present Convention who are documented or in a regular situation shall enjoy the rights set forth in part III of the present Convention and, except as modified below, the rights set forth in part IV.

Article 58

233. At its 10th, 11th and 12th meetings, on 6 and 7 June 1988, the Working Group considered a text for article 58 regarding frontier workers, on the basis of article 58 as contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. Frontier workers, as defined in article 2 (2) (a), shall be entitled to all 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 45].

"[2. Frontier workers shall have the right freely to choose their employment [or other economic activity] subject to article 52. This right shall not affect their status as frontier workers.]"

234. The Working Group had also before it a revised text for article 58 submitted by the Mediterranean and Scandinavian (MESCA) group of countries, reading as follows:

"1. Frontier workers, as defined in article 2 (2) (a), shall be entitled to all the rights provided for in part IV 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.

"2. Frontier workers shall have the right freely to choose their remunerated activity subject to article 5. This right shall not affect their status as frontier workers."

235. During the consideration of this article, the representative of the Federal Republic of Germany expressed his preference for the proposal submitted by MESCA. However, he felt that there was a need to exclude the application of articles 37 and 38, article 43 (1) (b), (d) and (g), and articles 46, 47, 48, 49, 51 and 56.

236. The representative of the Netherlands questioned whether it would not be useful at the outset to ascertain if all the articles in part IV would be applicable to frontier workers.

237. The representative of the USSR stated that his delegation would consider it appropriate to review carefully the provisions of each article in parts III and IV of the Convention before adopting a general clause which may later on give rise to unreliable interpretations.

238. The representative of the United States stated that a better approach to this article would be to specify those provisions in part IV which would not apply to frontier workers.

239. At its 11th meeting, the Working Group resumed consideration of article 58 and the Chairman invited the Group to discuss paragraph 1 of the article. The representative of Australia stated that the meaning of the term "residence" should be clarified.

240. In order to avoid misinterpretation of the word "residence", the representative of Italy was of the view that the phrase "excluding rights relating to or arising out of residence" was not necessary and suggested its omission.

241. The Chairman suggested the addition at the end of paragraph 1 of the phrase "taking into account that they have not established residency in the State of employment". This phrase was amended by the representative of the Federal Republic of Germany to conform to the wording of article 2, subparagraph 2 (a), of the Convention by introducing the term "habitual residence".

242. Several delegations suggested deleting the last phrase of paragraph 1, some wishing to have it complemented by the qualification suggested by the Chairman. Other delegations expressed preference for the retention of that last phrase with the amendment suggested by the Chairman. Several delegations also suggested that a rather general formulation of paragraph 1 should be adopted so as not to appear to include, or exclude, certain rights, and that the interpretation should be left to States.

243. The Chairman read out the following additional phrase to be put at the end of paragraph 1, as it appeared to be emerging through the discussions:

"taking into account that they do not have their habitual residence in that State."

244. At its 11th meeting, the Working Group adopted on second reading paragraph 1 of article 58 which reads as follows:

1. Frontier workers, as defined in article 2 (2) (a), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment, bearing in mind that they do not have their habitual residence in that State.

245. Turning to paragraph 2, the representative of the Federal Republic of Germany stated that his delegation preferred its deletion. If, however, other delegations did not share this view, in a spirit of compromise, he would not block consensus, but wished his view to be reflected in the report. The same reservation was expressed by the representatives of France and India.

246. The representative of Italy stated that it would be useful to retain paragraph 2, as it was important for a migrant worker to be able freely to choose work when conditions in the State of employment changed. Agreeing with this view, the representative of Finland suggested the addition of the phrase "subject to the time period specified in article 52".

247. The Chairman pointed out that article 52 was applicable to all workers, and thus paragraph 2 of article 58 did not seem necessary. This view was supported by several delegations.

248. The representative of Italy drew attention to article 52 (3) (a), which contained the words "resided lawfully", and underlined that frontier workers do not reside in the State of employment. He suggested the following text for paragraph 2 of article 58:

"2. Frontier workers shall have the right freely to choose their remunerated activity subject to the condition that they have lawfully exercised a remunerated activity in the State of employment for a period of time prescribed in its national legislation."

249. At its 11th meeting, the Working Group decided to delete paragraph 2 of article 58. After informal consultations, at the 12th meeting, on 7 June, the Working Group reverted to article 58. The representative of Italy, supported by several delegation, proposed the following addition to the article:

"States shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time."

250. The representative of the Federal Republic of Germany stated that his delegation did not agree with the Italian proposal. However, since it appeared to have the consensus of the Working Group, in a spirit of compromise, he would not block consensus in that regard.

251. The representative of Norway stated that since the Italian proposal was similar to the first sentence of paragraph 2 of the MESCA proposal, he wished to add to it the second sentence of the MESCA proposal, to read:

"This right shall not affect their status as frontier workers."

252. At the 12th meeting, the Working Group adopted paragraph 2 of article 58 as follows:

2. States shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

253. Article 58, as adopted on second reading by the Working Group, reads as follows:

Article 58

1. Frontier workers, as defined in article 2 (2) (a), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment, bearing in mind that they do not have their habitual residence in that State.

2. States shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

Article 59

254. The Working Group considered article 59 regarding seasonal workers at its 11th and 12th meetings, on 7 June 1988, on the basis of article 59, as contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"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 52.1"

255. The Working Group also had before it a revised text for article 59 submitted by the Mediterranean and Scandinavian (MESCA) group of countries, reading as follows:

"1. Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in part IV 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. The State of employment shall favourably consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities, giving them priority over other workers, who seek admission to that State subject to applicable bilateral and multilateral agreements."

256. At the 11th meeting, the Chairman announced that, after informal consultations, the following addition was proposed at the end of paragraph 1 of the MESCA text:

"... bearing in mind that their presence in the State of employment is restricted to part of the year."

257. Agreeing with the phrase read out by the Chairman, the representative of the Federal Republic of Germany stated that his delegation wished to see listed in paragraph 1 the articles of the Convention applicable to seasonal workers. He expressed his opposition to the inclusion of paragraph 2.

258. The representative of the Netherlands suggested to amend the text read out by the Chairman by adding the phrase:

"... and as far as these rights do not contradict their status as seasonal workers."

259. Thus the text for paragraph 1 before the Working Group read as follows:

"1. Seasonal workers as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment, bearing in mind that their presence in the State of employment is restricted to part of the year and as far as these rights do not contradict their status as seasonal workers."

260. The representative of the United States suggested to amend the above-mentioned text by adding after "provided for in part IV of this Convention" the phrase "except those set forth in article 43 (b), (c) and (d), article 52 and article 54 (d)."

261. The representative of Italy suggested to amend the last part of the text by adding to the MESCA proposal the phrase "and which are compatible with their status in that State as seasonal workers".

262. The representative of Algeria stated that, in paragraph 1 of article 59 reference should be made not only to part IV of the Convention but also to part III which concerned the protection of fundamental human rights and was therefore an extremely important part of the future international instrument.

263. At the 12th meeting, on 7 June, the Chairman announced that, following informal consultations on paragraph 1 of article 59, the text at the end of the MESCA proposal had been further amended. Thus paragraph 1 as it stood for the Working Group's consideration read as follows:

"1. Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment and which are compatible with their status in that State as seasonal workers, bearing in mind that their presence in the State of employment is established only for part of the year."

264. The representative of Finland said that the term "compatible" could give rise to different interpretations. Therefore, he suggested the following alternative sentence to replace the last part of paragraph 1: "These rights shall not affect their status as seasonal workers."

265. The representative of the United States suggested a slight amendment to the text read out by the Chairman so that the end of paragraph 1 would read:

"... bearing in mind that they are present in that State for only part of the year."

266. After a brief discussion, the Working Group, at its 12th meeting, on 7 June, adopted on second reading article 59, paragraph 1, which reads as follows:

1. Seasonal workers, as defined in article 2 (2) (b), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment and which are compatible with their status in that State as seasonal workers, bearing in mind that they are present in that State for only part of the year.

267. The representative of France stated that his delegation estimated that the right to family reunification is not included among the rights recognized in article 59 for seasonal workers.

268. The Working Group then turned to paragraph 2 of article 59. The representative of the Federal Republic of Germany recalled that his delegation would prefer the deletion of this paragraph, but he would not oppose the consensus as long as the position of his delegation is reflected in the report.

269. The representative of Australia suggested that paragraph 2 be preceded by the phrase "Subject to paragraph 1 above ...".

270. The representative of Norway preferred the deletion of paragraph 2. If the paragraph was retained, he would suggest the deletion of the words "priority" and "favourably". The representative of the United States shared this view and said that the Australian suggestion would make adoption easier for his delegation.

271. The Chairman suggested that the term "significant period of time" could be replaced by "prescribed period of time", the understanding being that the State of employment would prescribe this. The representatives of Greece and Finland underlined the importance of retaining paragraph 2.

272. Regarding the text of paragraph 2 in the MESCA proposal, the representative of France stated that his delegation preferred that the text end after the words "remunerated activities" and that the rest of the paragraph be deleted.

273. The representative of Canada drew attention to the fact that within Canadian legislation, rights of seasonal workers are defined in a manner which would make it extremely difficult to give seasonal workers priority in taking up remunerated activities other than those for which they were admitted to Canada over other workers who seek admission to Canada.

274. After this debate the Working Group, at its 12th meeting, on 7 June, adopted on second reading article 59, paragraph (2), which reads as follows:

2. The State of employment shall, subject to paragraph 1 above, consider granting seasonal workers who have been employed in its territory for a significant period of time, the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

275. Thus the text of article 59, as adopted on second reading, reads as follows:

Article 59

1. Seasonal workers, as defined in article 2 (2) (b), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment and which are compatible with their status in that State as seasonal workers, bearing in mind that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 above, consider granting seasonal workers who have been employed in its territory for a significant period of time, the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

Article 60

276. The Working Group considered article 60 regarding seafarers and workers on offshore installations at its 12th and 13th meetings on 7 and 8 June 1988, on the basis of article 60 as contained in document A/C.3/39/WG.I/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 or which the migrant worker is engaged."

277. The Working Group also had before it a revised text for article 60 submitted by the Mediterranean and Scandinavian (MESCA) group of countries, 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 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."

278. The Working Group first held a discussion on article 60 as a whole. The representatives of the Federal Republic of Germany and the Netherlands stated that part IV of the Convention should not apply to seafarers as this was a specialized category. They thus preferred the deletion of the article. The representative of the Netherlands, in particular, said that the jurisdiction of a State over a ship was not the same as in its territory; for example in his country, a whole set of social security legislation would not apply to seafarers. If this category of workers were to be included, the formulation of the article should be very limited. In that regard, reference to residence permit was very important.

279. The representative of Cape Verde maintained that, irrespective of other legal instruments that might be applicable to seafarers, this category of migrant workers should be covered by the present draft Convention. He also stated that subparagraph 1 (b) was of fundamental importance and therefore should be taken into account in any consensus that may emerge on this article.

280. The Chairman pointed out that the Working Group at its first reading had carefully reached the conclusion to establish some rights for seafarers because there is a connection between those persons who work on ships with the State of the flag of the ship. Those persons are under the jurisdiction of the State of the flag. The formulation proposed did not contradict the ILO Convention on Social Security for Seafarers. Reference could also be made in article 60 to part III of the Convention.

281. The representative of Norway agreed with the representative of the Netherlands that this group of workers was too specialized to be included in the Convention. Especially in view of the recent ILO Convention on Social Security for Seafarers adopted in 1987, article 60 should be deleted. The representative of France agreed with the representatives of Norway and the Netherlands. He said that his delegation was willing to obtain a consensus, but that should be based on subparagraph 1 (a).

282. The representatives of Italy and Greece stated that it was very important to include this category of workers in the Convention and protect them. The representative of Italy pointed out a distinction between subparagraphs 1 (a) and (b). Subparagraph 1 (a) referred to workers admitted in a certain State for

residence and working on ships, while subparagraph 1 (b) referred to those not authorized to take up residence. The representative of Italy also stated that in his view the difference between provisions applying to workers on a ship and those on an offshore installation was not clear and should be taken into account.

283. The representative of Australia noted that there seemed to be two main propositions behind the MESCA proposal, namely that the flag State would be the same as the State of residence, and that the residence envisaged would be long-term, involving full freedom to choose a remunerated activity or without limit of time.

284. The representative of the Philippines said that the discussion had shown just how important this article was and stated that her delegation supported its retention in the Convention.

285. The representative of Norway said that, in the view of his delegation if included in the Convention a distinction must be made between seafarers as well as between workers on mobile and non-mobile offshore installations.

286. The Working Group decided to postpone consideration of article 60 until its next session.

Article 61

287. At its 13th meeting, on 8 June 1988, the Working Group considered a text for article 61 on the basis of article 61 contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"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 45]."

288. The Working Group had also before it a new text for article 61, submitted by the Mediterranean and Scandinavian (MESCA) group of countries, reading as follows:

"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 45)."

289. During the consideration of this article, the representative of the Federal Republic of Germany stated that, in the view of his delegation, itinerant workers could be considered as seafarers on land and should therefore be excluded from this Convention. He therefore proposed amending the article to the effect that only rights contained in part III of the Convention would be applicable to them, adding that his delegation would not oppose the consensus, if its position was duly reflected in the report.

290. Because of the difficulty that his delegation had with the term "residence", the representative of Australia suggested its omission from the text, as well as the reference to article 45.

291. The representative of the United States, in supporting the suggestion made by Australia, proposed to add the phrase "and which are compatible with their status as itinerant workers in the State of employment", after the phrase "in the territory of the State of employment".

292. After a brief discussion, the Working Group adopted article 61 on second reading.

293. The text of article 61, as adopted on second reading, reads as follows:

Article 61

Itinerant workers, as defined in article 2 (2) (e), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence in the territory of the State of employment and which are compatible with their status as itinerant workers in that State.

Article 62

294. The Working Group considered a text for article 62 on the basis of article 62 contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"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 in so far 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 44, paragraph 1 (b) and (c), article 46 (b) and articles 53 to 55;]

"[(c) [Without prejudice to the rights recognized in article 48], 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.]

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

"(b) Do not suffer from double taxation, without prejudice to article 48."

296. During the consideration of this article, the Working Group decided to proceed paragraph by paragraph.

297. With regard to paragraph 1, the representative of the Federal Republic of Germany proposed the following changes: (a) the deletion of the words "and members of their families"; (b) the addition after the words "provided for" of the words "in part III of this Convention in so far as such rights are applicable in the State of employment, as well as the rights ..."; (c) the addition of the following to the list of provisions to be excluded: articles 38 and 40, article 41 (2), article 43 (1) (a) and (f), and articles 44 and 45. However, if delegations were not amenable to his proposals, he would not impede consensus, provided that his position was reflected in the report.

298. The representative of Algeria noted that when the case of migrant workers other than those referred to in this article had been considered, certain delegations had gone so far as to express reservations about some of the most basic human rights, whereas project-tied workers were given additional, quite unjustifiable rights. Refusing to accept this approach, and objecting to the climate that had prevailed during the drafting of the article, she said that she would not in any way accept the creation of a super-category of migrant workers, and she opposed the discriminatory character of the article. Moreover, she noted that the part concerning specific categories of migrant workers was in fact meant to subordinate certain rights to the status of these categories and thus grant them only those rights which were compatible with that status, not to grant them more rights than those provided for in parts III and IV of the Convention.

299. The representative of Italy explained that the proposal submitted by the MESCA group contained provisions designed for workers in a specific category and who are not expected to remain in the country of employment for a longer period of time, as their stay is linked with their employment contracts. He noted that while the provisions enumerated under subparagraph 1 (a) of the MESCA proposal would not be applicable in their case, they should be entitled to other rights because of their particular status.

300. The representative of the Netherlands said that his delegation was basically in accordance with the proposal submitted by MESCA. However, he was concerned that members of the family of the project-tied migrant worker were excluded in the MESCA proposal.

301. The representative of Norway also raised the concern of his delegation about family reunification.

302. The Chairman suggested that there was also a possibility of including article 50 in brackets among the exclusions until the Working Group approved a text for that article.

303. The representative of the United States stated that his delegation could support the general approach taken in the MESCA text with respect to subparagraph 1 (a). However, his delegation had two proposals to suggest: firstly, to make clear that the article does not provide for rights of family members of project-tied workers which his delegation understood to be the intent of the MESCA text. His delegation proposed to add the words, "relating to migrant worker", after the phrase "... all of the rights ..."; secondly, his delegation proposed to include among the provisions listed in subparagraph 1 (a), the portion of article 43 (1) (d) "as pertains to social housing schemes", so that article 62 (1) (a) would read "... article 43 (1) (b), (c), and as pertains to social housing schemes, (d), article 45 (b) and articles 52 to 55". He stated that if family members were to be included in this provision, they would have to be excluded from other provisions, pending the outcome of negotiations on this article.

304. The representative of Morocco stated that the approach to the drafting of the article had been different from that used in the other articles. In article 43, for example, poor migrant workers were subjected to certain conditions, whereas in article 62, project-tied workers enjoyed benefits which other workers did not. That constituted unacceptable discrimination. She added that, under subparagraph 1 (a), the party responsible for implementing that provision was the State of employment. There was no reason to conclude otherwise, for article 62 in no way indicated that the State of employment was the State of which the employer referred to in paragraph 2 was a national. Her delegation therefore believed that there existed some ambiguity, which needed to be dispelled. There were several references in the text to "States concerned". She asked which States were meant. She further noted that references had been made to the State of origin. Where was that State of origin? When, for example, a large French enterprise was in charge of executing a project in Kuwait and recruited Moroccan workers from France, which State was responsible for the protection of the rights of its workers?

305. The representative of Yugoslavia said that her delegation could accept this provision but only with the deletion of the reference to "article 45 (b)". She explained that her delegation could not see the reason why the members of the families of project-tied workers who are with them would not be able to join the worker who may stay in the State where the project is being carried out for several years. She added that there was a need to include in the article a provision stating that these workers were entitled to receive information relating to their stay and conditions of work. Her delegation also wished to state that the question of such workers had a direct bearing on Yugoslavia's economic policy. In the light of the importance attached to the question by her delegation, she insisted that the relevant provision should be retained in the Convention. In that respect, she cited the example of agreements recently signed by her Government and the Government of the Federal Republic of Germany.

306. With reference to the statement made that the provisions of article 62 were discriminatory towards other categories of migrant workers, the representative of

Italy stated that the sponsors of the MESCA proposal were not asking that the State of employment be obliged to provide supplementary rights for project-tied workers in this article. He added that the text required that necessary measures be taken by the States concerned in order to see that situations which are dissimilar from those relating to other migrant workers are also the object of certain guarantees.

307. The representative of France said that subparagraph 1 (b) should not be retained in the article, but should be included in some other part of the Convention. He added that it was often difficult for States to verify the fulfilment of commitments under such contracts.

308. The representative of Finland emphasized the importance of article 62 for his delegation. He opposed moving parts of it to a general part of the draft Convention, since this would make it difficult to cover the special situation of project-tied migrant workers. Referring to subparagraph 1 (b), the right to have written contracts would be especially important in this case, because it would enable the migrant worker to bring a derogation of such a contract before a competent court in the country concerned and protect the project-tied migrant worker against a situation where he would be obliged to accept a derogation in situ if he, e.g. lacked means to pay his travel costs back to his country of origin while at the same time lacking the right to stay in the State of employment. This situation did not arise for regular documented migrant workers since they had equality of treatment with nationals. Moving this provision to a general part would also have the effect of obliging States to require written employment contracts for everyone (given the equality of treatment clause) which would clearly be unrealistic. In respect of social security, project-tied migrant workers also are in a special situation, because they have no right to stay in the State of employment since the latter in practice do not grant them a right to social security. Paragraph 4 was therefore needed to avoid that they fall out of all security systems (even in their State of origin) merely because they are not present in that State while working on a specific project in another State.

309. The representative of the Federal Republic of Germany said that there was some justification in speaking of "positive discrimination" with regard to this category if the application of certain provisions of the Convention, such as articles 25, 27 and 44, to this category were not excluded or restricted, as his delegation had proposed.

310. The representative of the Soviet Union stated that in his view some of the exclusions suggested in the course of the debate had some grounds. He proposed that article 2 (f) should be included in the first paragraph of article 62.

311. The delegation of Spain stated that it could not accept the current wording of subparagraph 1 (a), since it embodied major restrictions likely to have adverse implications for project-tied workers. Nevertheless, as it was anxious not to stand in the way of a consensus, it would be prepared to have its position placed on record in the report.

312. The delegation of China placed on record that the provision of subparagraph 1 (c) is contrary to the present Chinese foreign exchange

regulations. Therefore, he would reserve the position of his delegation as regards subparagraph (c).

313. The representative of Algeria stated that the arguments presented by some delegations to justify the addition of paragraphs containing certain supplementary rights had not been convincing, and she reaffirmed that her delegation could accept only a provision that would grant to this category of migrant workers the rights stipulated in part IV, except those which were incompatible with their status.

314. At its 14th meeting, on 8 June, the Working Group, after a lengthy discussion and as a result of informal consultations, adopted article 62 (1) (a), and decided to postpone consideration of the remaining parts of the article to its next session.

315. The text of article 62, (1) (a), as adopted on second reading, reads as follows:

Article 62

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

(a) To the rights provided in part IV of this Convention, except the provisions of article 43 (1) (b), (c) and (d), as it pertains to social housing schemes, article 45 (b), [article 50] and article 52 to 55.

Article 62 bis

316. At its 14th meeting, on 8 June 1988, the Working Group had before it a text submitted by Australia, Canada and the United States of America containing a new proposal for 62 bis, which was introduced by the representative of Australia, and read as follows:

"1. Specified employment workers as defined in article 2 (2) (g) shall be entitled to all of the rights relating to migrant workers in part IV of the Convention, excluding those set forth in article 43 (1) (b) and (c); in article 43 (1) (d) as it pertains to social housing schemes; and in articles 52 and 54 (d).

"2. Members of the family of specified employment workers shall be entitled to all of the rights relating to family members of migrant workers in part IV of the Convention, excluding those set forth in [article 50 and] article 53."

317. In introducing this text, the representative of Australia stated that all the exceptions referred to in this article related to the freedom to choose employment or subsidiary matters. He noted that the purpose of the categories could not be captured by listing examples. Australia's views on this category of worker proceeded from the basis that it was a country of immigration. Australia made a basic distinction between those accepted as permanent members of its society and those admitted on a temporary basis. As a legitimate exercise of its sovereignty,

Australia limited the right freely to choose employment to the former. The representative underlined the importance which this issue had for his Government. He acknowledged that the definition in article 2 (2) (g) was perhaps not the best possible, but it was adequate for present purposes.

318. The Chairman stated that in his opinion, the concerns of Australia, Canada and the United States were already covered in the Convention. He pointed out that, in the accepted definitions, there was no mention of the words "assignments" and "duties".

319. The representative of the Federal Republic of Germany stated that his delegation was not in favour of including the categories mentioned in article 2 (2), in the Convention; he could not see why the Working Group could accept other categories of workers and not the type of worker referred to under article 62 bis.

320. The representative of Finland said that there was no provision in the Convention which gave migrant workers the right to extend their period of time in the State of employment indefinitely. This matter could be regulated in the conditions for admission, which depended upon the sovereign decision by the State of employment. The free choice of employment also had to be regulated in the admission procedure. Thus, the particular concerns raised by the Australian proposal seemed to be taken care of by article 51 and the former article 37 to be included in part VIII of the Convention.

321. The representative of the Soviet Union said that his delegation was still not convinced of the need to retain this special category in the Convention and that they were already covered in existing articles of the Convention.

322. The representative of Morocco, supported by the representative of Algeria, said that when the question of that category of workers had been raised, although her delegation had been absent, it had still opposed the reference in article 2 (f). Recalling the provisions of the preamble, in which reference was made to migrant workers as a vulnerable group for which the Convention had been expressly prescribed by the General Assembly, her delegation could not accept the inclusion in the Convention of the category of persons referred to in article 62 bis.

323. The representative of Yugoslavia said that her delegation was not convinced of the need to include this special category of workers in the Convention. If, nevertheless, there was agreement in the Working Group on the inclusion of this category in the Convention, it should be clearly stated that they shall enjoy all the rights of other migrant workers, except those rights relating to authorization of residence, work permit and choice of remunerated activities and employer.

324. The representative of Norway recalled the flexibility which the three co-sponsors of the proposal had shown in the discussion of the provisions which caused them concern. He saw no reason to reject the inclusion of article 62 bis.

325. The representative of Greece recalled that, in 1985, his delegation had opposed the inclusion of this article in the Convention because it was not clear exactly what type of workers it was intended for, and was therefore not in favour of its inclusion in the Convention.

326. The representative of Italy stated that, instead of introducing a new article in this part of the Convention, a reference be made to specified employment workers in subparagraph 3 (a) of article 52 in order to exclude the latter category from the time-limit prescribed in that provision. He felt that this would cover the Australian concern.

327. In view of the lack of agreement, the Working Group decided to defer consideration of article 62 bis to its next session, leaving the possibility to review subparagraph (g) in article 2.

* * *

328. The representative of Japan stated that his Government was now carefully studying its basic policy and measures to be taken for receiving foreign workers into Japan, and therefore reserved the right to express at a later stage its stand on this draft Convention.

329. At the 16th meeting, on 10 June, the Working Group adopted the present report.

II. TEXT OF THE ARTICLES ADOPTED BY THE WORKING GROUP ON SECOND
READING DURING ITS INTER-SESSIONAL MEETING OF 1988

PART IV

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

Article 51

Migrant workers who in the State of employment are not allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of the work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its laws and regulations concerning recognition of occupational qualifications acquired outside its territory. However, States parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has

resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

[4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his own account and vice versa. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.]

Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52.

2. In respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States parties to the present Convention shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

Article 54

Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

(a) Protection against dismissal;

(b) Unemployment benefits;

(c) Access to public work schemes intended to combat unemployment;

(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity subject to article 52.

Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

PART V

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

Article 57

The particular categories of migrant workers and members of their families specified in this part of the present Convention who are documented or in a regular situation shall enjoy the rights set forth in part III of the present Convention and, except as modified below, the rights set forth in part IV.

Article 58

1. Frontier workers, as defined in article 2 (2) (a), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment, bearing in mind that they do not have their habitual residence in that State.

2. States shall consider favourably granting frontier workers the right freely to choose their remunerated activity after a specified period of time. The granting of that right shall not affect their status as frontier workers.

Article 59

1. Seasonal workers, as defined in article 2 (2) (b), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment and which are compatible with their status in that State as seasonal workers, bearing in mind that they are present in that State for only part of the year.

2. The State of employment shall, subject to paragraph 1 above, consider granting seasonal workers who have been employed in its territory for a significant period of time, the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

Article 61

Itinerant workers, as defined in article 2 (2) (e), shall be entitled to the rights provided for in part IV of this Convention which can be applied to them by reason of their presence in the territory of the State of employment and which are compatible with their status as itinerant workers in that State.

Article 62

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

(a) To the rights provided in part IV of this Convention, except the provisions of article 43 (1) (b), (c) and (d), as it pertains to social housing schemes, article 45 (b), [article 50] and articles 52 to 55.

PART VIII

General provisions

Article ...

Nothing in the present Convention shall affect the right of each State party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States parties shall be subject to the limitations set forth in the present Convention.
