

A/C.3/35/WG.1/CRP.16/Add.1  
20 May 1981

ORIGINAL: ENGLISH

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS  
AND DIGNITY OF ALL MIGRANT WORKERS

DRAFT REPORT OF THE OPEN-ENDED WORKING GROUP ON THE DRAFTING  
OF AN INTERNATIONAL CONVENTION ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES

(Intersessional meeting - 11-22 May 1981)

(continued)

Chairman: Mr. Antonio Gonzalez de Leon (Mexico)

Article 3

1. Some delegations felt that if the proposed Convention were to cover frontier workers, it should also be extended to seasonal workers. In the views of other delegations neither frontier workers nor seasonal workers should be included in the scope of the proposed Convention.

2. The delegations of Italy and Belgium, supported by others, questioned the usefulness of laying down the definitions contained in articles 3 and 4 of the proposed Convention, as they were rarely referred to in the remaining part of the preliminary draft CRP.7.

Article 4

Subparagraph (a)

3. As concerns the definition of the term "recruitment" various delegations expressed the view that such a definition should be based upon part I of ILO Recommendation No. 86 and annexes I and II to ILO Convention No. 97, meaning the engagement of a person in one territory on behalf of an employer in another territory, or the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with any arrangements related to such operations, including the seeking for and selection of emigrants and preparations for their departure.

4. The delegation of Morocco and several delegations were in favour of deleting the word "orally". In their view, the validity of the contracts of migrant workers was, in many legislations, dependent upon written evidence of such contracts. The question of the validity of oral as opposed to written contracts, as a source of labour rights, was discussed at length by the Group with the participation of the ILO. However, there was no prevailing opinion in this respect.

Subparagraph (b)

5. As concerns the term "introduction", it was felt that such definition should be more precise. It was suggested that this term should be used in the proposed Convention to mean, as in ILO Convention No. 97, any operations for ensuring or facilitating the arrival in or admission to a territory of a migrant worker who has been given employment. In this connexion, some delegations suggested to use the term "entry" instead of "admission".

Subparagraph (c)

6. The delegations of Jordan favoured replacing the word "moment" by the words "date or time" and the deletion of all the words after the word "destination".

Subparagraphs (d) and (e)

7. As regards the meaning of the term "State or origin", it was suggested that this definition be reviewed, as the State from which a worker departs may not be necessarily his State of nationality.

Substantive articles

8. Various delegations felt that the detailed substantive provisions of the preliminary draft in CRP.7 constituted a solid basis for fruitful debates. In the view of certain representatives, however, these provisions were sometimes unclear and repetitious. These delegations considered, in particular, that the provisions often failed to indicate clearly whether they were meant to be applicable to all migrant workers, only to authorized migrant workers or solely to undocumented migrant workers.

Article 5

9. It was stated by the sponsors that draft article 5 was meant to apply to both authorized and undocumented migrant workers.

10. Some representatives felt that it was highly inappropriate and improper to claim "equality before the law" for undocumented migrants whose very presence in the territory of the State of destination violated the laws of that country. Apart

/...

from this basic objection, these representatives considered that many of the rights mentioned in the illustrative list of this article, for instance pension rights, could not, for practical administrative reasons, be granted to clandestine migrant workers whose identity and whereabouts could not be attested to in documentary form.

11. It was the suggestion of the representative of the United States that, inasmuch as the article would apply to undocumented migrant workers, it should guarantee "fair treatment" or "due process" rather than "equality before the law".

12. The delegations of Argentina, Brazil and the United States suggested that the whole phrase after the words "their own citizens" should be deleted. The representative of Argentina further suggested a formulation under which equality before the law would be recognized "in accordance with national legislation".

13. Questions were raised as to the meaning of the terms "equitable and satisfactory" which were found too vague by some delegations.

14. According to the representative of the United States, the right to repatriate earnings and savings should be recognized only "in accordance with currency regulations".

New framework for the Convention proposed by the delegations  
of Finland, Greece, Italy, Portugal, Spain and Sweden in  
A/C.3/35/WG.1/CRP.15

15. The sponsors of this proposal stated that it was submitted as a first outline of a possible framework for the Convention. It constituted a restructuring of many of the subject-matters dealt with in CRP.7, without implying at this stage any acceptance of the substance or wording of the seven-Power draft. Some provisions suggested in CRP.15 were additional to those contained in CRP.7.

16. The structure proposed in CRP.15 was as follows: Preamble; section I to contain definitions which would attempt notably to distinguish between authorized and undocumented migrant workers; section II to recognize fundamental human rights inherent to all migrant workers; section III to deal with the basic rights of authorized migrant workers; section IV to deal with special categories of authorized migrant workers; section V to concern the promotion of sound and equitable conditions for international migrations, including inter-State co-operation to prevent and punish illegal and clandestine migratory movements and trafficking; and section VI to contain various final clauses including a general limitation clause in the interest of public order, public security and public health.

-----