



General Assembly

Distr.  
GENERAL

A/C.3/44/1  
19 June 1989  
ENGLISH  
ORIGINAL: ENGLISH/FRENCH/  
SPANISH

Forty-fourth session  
THIRD COMMITTEE  
Agenda item 12\*

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 10 November 1982; (f) a third inter-sessional meeting, from 31 May to 10 June 1983; (g) a fourth session, during the thirty-eighth session of the Assembly, from 27 September to 6 October 1983; (h) a fourth inter-sessional meeting, from 29 May to 8 June 1984; (i) a fifth session, during the thirty-ninth session of the Assembly, from 26 September to 5 October 1984; (j) a fifth inter-sessional meeting, from 3 to 14 June 1985; (k) a sixth session, during the fortieth session of the Assembly.

\* A/44/50/Rev.1.

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 Assembly, from 22 September to 2 October 1987; (o) a seventh inter-sessional meeting, from 31 May to 10 June 1988; (p) a ninth session, during the forty-third session of the General Assembly, from 27 September to 7 October 1988; and (q) an eighth inter-sessional meeting, from 31 May to 9 June 1989.

3. In its resolution 43/146 of 8 December 1988, the General Assembly, inter alia, took note with satisfaction of the reports of the Working Group (A/C.3/43/1 and A/C.3/43/7) 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 1989 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 1989, as well as to transmit the results obtained at that meeting to the Assembly for consideration during its forty-fourth 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-fourth 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 1989 of the Economic and Social Council and during the forty-fourth session of the Assembly.

4. In pursuance of General Assembly resolution 43/146, the Working Group met at United Nations Headquarters from 31 May to 9 June 1989 under the chairmanship of Mr. Antonio González de León and the vice-chairmanship of Mr. Juhani Lönroth. It held 14 meetings with the participation of delegations from all regions. Observers for the International Labour Organisation (ILO) and the World Health Organization (WHO) also attended the meetings.

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

(a) Reports of the Working Group on its inter-sessional meeting in the spring and on its session in the fall of 1988 (A/C.3/43/1 and A/C.3/43/7);

(b) Text of the preamble and articles of the draft Convention provisionally agreed upon by the Working Group during the first reading (A/C.3/39/WG.I/WP.1);

(c) Text of the preamble and articles of the draft Convention adopted on second reading by the Working Group (A/C.3/44/WG.I/WP.1);

- (d) Text of pending articles and parts of articles of the draft Convention still in brackets on second reading (A/C.3/44/WG.I/CRP.1 and A/C.3/44/WG.I/CRP.1/Rev.1);
- (e) Proposals for part VII (formerly part VI) of the draft Convention submitted by Mexico (A/C.3/43/WG.I/CRP.1/Rev.1);
- (f) Letter dated 9 June 1989 from the Chairman of the Working Group, addressed on behalf of the Working Group to the Under-Secretary-General for Human Rights;
- (g) Working paper submitted by Japan containing proposals for parts VIII and IX of the draft Convention (A/C.3/44/WG.I/CRP.3);
- (h) Proposals for article 50 of the draft Convention submitted by Portugal and the Federal Republic of Germany (A/C.3/44/WG.I/CRP.4);
- (i) Working paper submitted by Japan containing proposals relating to articles 50, 56, 62, 70, 72 and 74 of the draft Convention (A/C.3/44/WG.I/CRP.5);
- (j) Pending articles and parts of articles of the draft Convention still in brackets on second reading (A/C.3/44/WG.I/CRP.6 and Add.1);
- (k) Letter dated 3 May 1988 submitted by the International Labour Office (A/C.3/43/WG.I/CRP.2);
- (l) Working paper submitted by Finland, Greece, Italy, Morocco, the Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia containing proposals for part VII of the draft Convention entitled "Application of the Convention" (A/C.3/43/WG.I/CRP.5);
- (m) Working paper submitted by Finland, Greece, India, Italy, Norway, Portugal, Spain and Sweden containing a proposed text for article 62 ~~ter~~ (Self-employed migrant workers) (A/C.3/43/WG.I/CRP.6).
6. For reference the following documents were available to the Working Group:
- (a) Previous reports of the Working Group (A/C.3/35/13, A/C.3/36/10, A/C.3/37/1, A/C.3/37/7 and Corr.1 and 2 (English only), A/C.3/38/1, A/C.3/38/5, A/C.3/39/1, A/C.3/39/4 and Corr.1 (English only), A/C.3/40/1, A/C.3/40/6, A/C.3/41/3, A/C.3/42/1 and A/C.3/42/6);
- (b) Cross-references in the draft Convention (A/C.3/40/WG.I/CRP.3);
- (c) Working paper concerning self-employed migrant workers submitted by Finland, Greece, India, Italy, Norway, Spain and Sweden, subsequently joined by Portugal, containing proposals for additional provisions in article 2 and part IV of the draft Convention (A/C.3/40/WG.I/CRP.6);
- (d) Letter dated 21 August 1985 from the Vice-Chairman of the Working Group addressed to the Chairman of the Working Group (A/C.3/40/WG.I/CRP.7);

(e) Working paper submitted by the United States of America containing a proposal relating to article 2 of the draft Convention (A/C.3/40/WG.I/CRP.9);

(f) Proposal by Australia for a new subparagraph of article 2, paragraph 2, of the draft Convention (A/C.3/40/WG.I/CRP.9);

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

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

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

(j) Comments of the Government of Colombia on the report of the Working Group (A/C.3/40/WG.I/CRP.2);

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

(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 of the draft Convention (A/C.3/38/WG.I/CRP.5);

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

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

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

Article 2, paragraph 2 (h)

8. At its 12th meeting, on 7 June 1989, the Working Group took up consideration of article 2, paragraph 2 (h). The representative of Finland reported to the Working Group that during informal consultations there had emerged a proposed text for the subparagraph reading as follows:

"The term 'self-employed worker' refers to a migrant worker engaged in a remunerated activity otherwise than under a contract of employment and who earns his living through this activity normally working alone or together with

members of his family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements."

9. The representative of Finland pointed out that with that text the words "self-employed worker" could be deleted from article 3 (f); the brackets from article 52, paragraph 4 could be removed; article 62 ~~to~~ could be accepted without brackets and subparagraph 3 thereof could be deleted (see A/C.3/44/CRP.1/Rev.1).

10. The Working Group noted that there had been a consensus in informal consultations upon those provisions. However, since all delegations did not have final instructions concerning the adoption of the proposals, the Working Group decided to postpone their adoption to its next session.

#### Article 50

11. The Working Group tried to resume consideration of article 50. However, for lack of time, the Working Group decided to postpone further consideration of that article, as well as other outstanding matters, to its next session.

#### Article 56

12. At its 11th meeting, the Working Group took up discussion of article 56, on the basis of a text which had emerged from informal consultations, 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 reasons defined in the national legislation of that State.

"Expulsion shall not be resorted to solely 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."

13. The discussion which ensued questioned whether the proposed article 56 merely repeated article 22, or if it actually enhanced it. The appropriateness of the word "solely" in paragraph 2 was also examined.

14. The representative of Portugal stated that, while his delegation could be flexible, his first choice for article 56 was his delegation's proposal and his second the Mediterranean and Scandinavian group of countries (MESCA) proposal, but he could accept the text which had emerged from informal consultations if the word "solely" was replaced by "mainly". The Portuguese proposal read as follows:

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

"(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 or validity of their authorization of residence or work permit is not fulfilled.

"2. 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.

"3. 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 resided in the State of employment."

15. Various delegations questioned the use of the word "solely". They suggested that the wording was ambiguous and could be abused by States that sought to evade the prohibition contained in that provision by establishing more than one reason for the expulsion. They also indicated that it might be difficult for a Court to establish that the sole motive for expulsion was the desire to deprive the migrant worker and his family of his rights. The representative of the Federal Republic of Germany proposed that, in order to overcome the concerns raised, the word "solely" could be deleted.

16. The representative of Algeria stated that the notions contained in article 13 of the International Covenant on Civil and Political Rights should be incorporated into the proposed article 56. She also pointed out that the proposed article 56 was redundant in view of the provisions already adopted as article 22.

17. The representatives of Australia, Finland, Germany, Federal Republic of, Italy, Mexico, Morocco, Sweden and Yugoslavia were of the opinion that article 56 should remain. They said that, while article 22 covered merely procedural safeguards relating to the expulsion of all migrant workers, including irregulars, the formulation of article 56 as it had emerged from informal consultations sought to provide additional safeguards for migrant workers in a regular position. These additional safeguards were namely that migrant workers could be expelled only for reasons defined in national legislation, that expulsion should not be motivated by the desire to deprive the migrant worker of his rights as a result of the employment situation or other economic considerations and that humanitarian factors must be taken into account in determining expulsion.

18. The representative of Finland expressed the view that, if article 56 were deleted, any State Party could expel any migrant worker or a member of his family

regardless of their status at any time on whatever grounds. That was clearly not the object or purpose of the Convention.

19. The representative of Morocco stated that she was willing to support article 56 on the condition that it was clearly stated in the report that the objectives of the article were to provide additional safeguards and to enhance the provisions of article 22.

20. The representative of Algeria said she had not been convinced by the arguments put forward by many delegations representing States of employment; she still had doubts about the reasons behind such an article. She also felt that, if the sponsors of the text really wanted to give effective protection to migrant workers threatened with arbitrary expulsion for economic reasons. The provision should be worded more clearly so as to avoid any ambiguity.

21. The representative of Japan agreed with the representative of Algeria that article 56 as proposed was not necessary. However, since in his view the main thrust of article 56 was contained in its paragraph 2, a compromise might be found by deleting paragraphs 1 and 3.

22. The representative of India said that her delegation preferred the deletion of article 56 as proposed and could accept article 56 only if it was a general formulation whereby the question of expulsion would be regulated only by domestic law and bilateral agreements. In that connection, she proposed that article 56 should be adopted in the following formulation:

"Migrant workers and members of their families in a regular situation may not be expelled from its territory by a receiving State, except in accordance with national laws, or in accordance with existing bilateral agreements."

23. The Working Group could not reach a conclusion on that provision and thus decided to leave it pending and to take it up with all pending matters at its next session.

Article 70, paragraph 2 (former article 69 bis, para. 2)

24. At its 9th meeting, on 3 June 1989, the Working Group took up consideration of paragraph 2 of article 69 bis, which it had left pending at its last session on the basis of a proposal contained in paragraph 160 of document A/C.3/43/7 submitted by Morocco reading as follows:

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

25. The Chairman read out a text that had emerged from informal discussions as follows:

"As regards matters relating to the death of a migrant worker or a member of his family, States parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters."

26. Turning to the text which had emerged from the informal consultations, the representative of Australia proposed deleting the words "As regards" at the beginning of the sentence.

27. The representative of Algeria said that the question of settlement as such was not specifically provided for, and she proposed that the Working Group consider the proposal as suggested by Morocco.

28. The representative of the Federal Republic of Germany expressed dissatisfaction with the proposal by Morocco because matters relating to death compensation generally fell within the scope of domestic regulations pertaining to matters such as social security and life insurance, which, with the exception of social security, were not always covered by international agreements.

29. The representative of Italy questioned the necessity of stating explicitly that the relevant provisions of the Convention would be applicable. However, if the Working Group decided to make such a reference, the words "settled under" should be replaced by the words "carried out on the basis of applicable national law and in accordance with" in order to underline the relevance of domestic legislation.

30. The representative of the United States agreed that the addition proposed by Morocco might not be necessary, but allowed that it might clarify that the previous articles which did not specifically pertain to death compensation now did so. His delegation could accept the proposal if it helped other delegations to reach a consensus.

31. The representative of Finland, in an attempt to reach a consensus, proposed a formula as follows:

"Any settlement of these matters shall be carried out according to the provisions of the present Convention and any relevant bilateral or multilateral agreements."

32. After some discussion the Working Group adopted the text of paragraph 2 of article 69 bis as follows:

Article 70, paragraph 2

2. As regards compensation matters relating to the death of a migrant worker or a member of his family, State Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

33. The Working Group agreed that article 69 bis as a whole would be renumbered article 70, as a result of the deletion of some articles.



Article 71, paragraphs 8 and 9 (former article 70 of the first reading)

34. At its 1st meeting, on 30 May 1989, the Working Group decided to resume consideration of article 71, paragraphs 8 and 9, on the basis of article 70, paragraphs 8 and 9, of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

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

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

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

35. After a brief discussion the Working Group agreed to defer consideration of matters relating to the financing of the supervisory machinery to a later stage. Consequently, the Working Group decided to postpone consideration of article 71, paragraphs 8 and 9, until its next session.

Article 73 (former article 72 of the first reading)

36. During the fall of 1988, the Working Group had adopted paragraphs 1 to 5 of former article 72 of the first reading (now paragraph 73). During its spring session of 1989 it resumed consideration of the remaining paragraphs of article 73 at its 2nd and 3rd meetings. The Working Group took up consideration of paragraphs 6, 7 and 8 on the basis of paragraph 4 (b), 5 and 6 of a proposal submitted by Finland, Greece, Italy, Morocco, the Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia contained in conference room paper A/C.3/43/WG.I/CRP.5 (see also A/C.3/43/7, para. 286).

Article 73, paragraph 6

37. The Working Group considered paragraph 6 of article 73 on the basis of paragraph 4 (b) of the proposal contained in document A/C.3/43/WG.I/CRP.5 (see also A/C.3/43/7, para. 286), reading as follows:

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

38. In introducing the proposal, the representative of Finland stated that the text should be included in the Convention since it would make explicit the right of the Committee to invite the participation of other United Nations organs in its meetings in addition to ILO.

39. The representative of Japan questioned the necessity for such a text because he felt that it was obvious that the Committee had a right such as that expressed in the proposal.

40. The representative of Morocco pointed out that the reason why paragraph 4 of the MESCA proposal had been divided into subparagraphs (a) and (b) was to indicate the difference in the relationships between ILO and the Committee on the one hand and other United Nations organs and the Committee on the other. The representative of Italy took the view that the fact that ILO was to be invited to Committee meetings as of right ("shall be invited"), whilst the invitation of other United Nations organs was subject to the Committee's discretion ("may also invite"), was not a sufficiently clear distinction. The representative of the Federal Republic of Germany, however, felt that the difference adequately distinguished the two types of relationships.

41. In addition, the representative of the Union of Soviet Socialist Republics suggested that, if the text of paragraph 4 (b) was included in the Convention, then the words "in a consultative capacity" should be omitted in order to highlight the different relationship which ILO would enjoy with the Committee as compared with that to be enjoyed by other United Nations organs. That suggestion was supported by the representative of Italy, who suggested that the words "to participate, in a consultative capacity," be replaced with the words "to be heard". The representatives of the Soviet Union and Japan supported that suggestion.

42. Regarding the suggestion by the representative of Italy, the representative of Finland indicated that the proposal "to be heard" would leave open the question whether parties not present in the meeting could be heard, e.g., by a written procedure. The representative of Italy accordingly amended his suggestion to read "to be present and heard".

43. Regarding the suggestion made by the representative of the Soviet Union the representative of Australia questioned whether, in omitting the reference to a consultative capacity, the Working Group would not end up giving greater prominence to other United Nations organs than to ILO. He indicated that, in allowing other United Nations organs to participate in the meetings of the Committee, whilst allowing ILO to participate "in a consultative capacity" could be interpreted as giving ILO only a qualified version of the right enjoyed by other United Nations organs.

44. The representative of Morocco suggested a further way in which the Working Group could highlight the distinction it sought to create. She suggested the deletion of the word "also" in order not to give the impression that other United Nations organs were to be treated in a similar way to ILO. That idea was supported by the representatives of Finland, the Netherlands, the Soviet Union and Yugoslavia.

45. After some discussion, the Working Group decided to take up paragraph 6 of article 73 in informal consultations.

46. At the 3rd meeting, on 31 May 1989, the Chairman read out the text of paragraph 6 of article 73 as it had emerged from the informal consultations:

"The Committee may invite representatives of other specialized agencies and other organs of the United Nations, as well as of intergovernmental organizations, to be present and heard in its meetings whenever matters falling within their field of competence are considered."

47. At the same meeting, the Working Group adopted the above text as it had emerged from the informal consultations as paragraph 6 of article 73.

Article 73, paragraph 7

48. The Working Group considered a text for paragraph 7 of article 73 on the basis of paragraph 5 of the proposal contained in conference room paper A/C.3/43/WG.I/CRP.5 (see also A/C.3/43/7, para. 286), reading as follows:

"5. The Committee shall present annually to the General Assembly of the United Nations, for its information, a report summarizing its comments on the reports of States Parties and the observations, if any, of the latter thereon. The Committee may include such general recommendations and suggestions as it deems appropriate arising out of the examination of the reports of States Parties."

49. In introducing the proposed text, the representative of Finland indicated that the innovation in the text was that it planned for the Committee to give reports to the General Assembly "for its information". He was of the view that decisions concerning the implementation of the Convention were for States Parties only to take, although the Assembly would be called upon to react to any recommendations and proposals contained in the report.

50. The Working Group held a discussion as to whether the major emphasis in the Committee's annual reports should be placed on reviewing the reports of the States parties submitted to it, or whether greater emphasis should be given to the Committee's own observations and recommendations.

51. The representative of Morocco stated that the MESCA proposal sought to avoid a situation in which States not parties to the Convention would be in a position to influence its functioning.

52. The representative of Algeria, however, took the view that the MESCA proposal was too restrictive and therefore expressed a preference for the first-reading text. The representatives of Italy and the United States supported the position taken by the representative of Algeria and indicated that it was for the General Assembly to decide how it would react to any reports made to it. In addition, the representative of the Soviet Union pointed out that, if reports were made only for the Assembly's information, then it would not be at liberty even to discuss them. He suggested that the Assembly should be relied upon to not wish to undermine the proper functioning of the Convention. The representative of Sweden supported the position taken by Algeria as further elaborated by the representative of the Soviet Union. The representative of Colombia questioned whether making the reports for the information of the Assembly only would be enough to deter any State determined to obstruct the proper functioning of the Convention. The representative of

Australia also expressed a preference for the text adopted during the first reading as long as that text indicated that reports would be submitted directly to the Assembly, and not through the Economic and Social Council, noting the problems of timing which could otherwise arise.

53. With regard to the text adopted by the Working Group during the first reading, the representative of Finland took the view that a report on the Committee's "activities" could, given a *mala fide* interpretation, merely lead to the production of a report dealing with the number of meetings held and other activities of the Committee on a superficial level without delving into the substance of the matters it considered. In that connection, the representative of the Soviet Union indicated that there were established guidelines for the production of reports within the United Nations system and therefore that any reports would be of an appropriate standard.

54. The representative of Morocco questioned whether it would be useful to ask for a report on the Committee's activities since, in view of the probable diversity of its members, it would have to spend much of its time trying to reach compromises in order to take decisions.

55. The representative of the Soviet Union pointed out that the proposed formula missed the substantial point, which in his opinion was that the annual reports should actually be based on the examination of reports submitted by the States parties. Furthermore, the phrase given in the proposed formula that the report should contain the Committee's "own considerations" was not sufficiently explicit, as it failed to mention the source that was actually being considered.

56. The representative of Italy, supported by the representative of Sweden, stated that, if stress were to be placed on summarizing the reports of the States, the end product would be a mere summary. He felt the stress should rather be placed on the Committee's consideration of the reports. Such reports would be of greater interest and prove more relevant to the General Assembly.

57. The representative of the Federal Republic of Germany, stating that he had no difficulty with the point made by the representative of the Soviet Union, believed however that article 72, read as a whole, clearly showed that the annual reports must concern the reports submitted by States.

58. The representative of the Soviet Union said that it was his delegation's firm belief that the Committee's annual reports must not be "based on its own considerations and recommendations", as proposed. Rather, he suggested that paragraph 5 should state that the Committee's reports would contain "its considerations and recommendations based on the examination of the States' reports and observations presented by State Parties". The Committee's ideas should be presented as a conclusion and not as the basis of the report.

59. The representative of Algeria expressed the view that in order not to restrict the scope of the annual reports, the words "in particular" could be inserted.

60. After some discussion, the Chairman read out a revised text of paragraph 7, as follows:

"7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties."

61. The Working Group decided to adopt it as paragraph 7 of article 73.

62. The delegation of Japan placed on record that it had wished to make a proposal to add a new subparagraph to article 73 which would have read:

"The State Party concerned shall have the right to be represented when its report is considered by the Committee and to make submissions orally and/or in writing."

However, in view of the understanding of the Working Group as referred to in paragraph 341 of document A/C.3/43/7, the delegation of Japan had refrained from making a proposal with the confirmation that it was the practice within the United Nations system for all State parties to participate in the proceedings of a committee when a report concerning them was being examined, and that consensus on paragraph 1 was achieved on the understanding that that practice would be followed by the Committee under the Convention.

63. Upon a proposal made by the delegation of Morocco, the Working Group, in adopting the compromise formula for paragraph 7 of article 73, wished to reaffirm the independence of the Committee and the importance of that independence for the attainment of the Convention's goals.

#### Article 73, paragraph 8

64. The Working Group considered a text for paragraph 8 of article 73 on the basis of paragraph 6 of the proposal contained in conference room paper A/C.3/43/WG.I/CRP.5 (see also A/C.3/43/7, para. 286), reading as follows:

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

65. The representative of Sweden suggested rewording the paragraph by stating "... transmit the annual reports of the Committee ...".

66. The representative of Algeria expressed her preference for maintaining the text of article 72, paragraph 3, of the first reading contained in document A/C.3/39/WG.I/WP.1, reading:

"3. The Secretary-General shall transmit the reports of the Committee to the [Economic and Social Council and] the Commission on Human Rights of the United Nations [and to the Governing Body of the International Labour Office]."

67. After a brief discussion, the Chairman read out the text as slightly revised in the course of the debate. The revised text reads as follows:

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

68. The Working Group adopted the above as paragraph 8 of article 73 and adopted article 73 as a whole.

69. The text of article 73 as adopted on second reading reads as follows:

#### Article 73

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

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

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

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

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

6. The Committee may invite representatives of other specialized agencies and other organs of the United Nations, as well as of international organizations, to be present and heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

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

Article 74 (former article 73 of the first reading)

70. The Working Group considered a text for article 74 at its 3rd meeting, on 31 May 1989. On the basis of the text of article 73 adopted on first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. The Committee shall adopt its own rules of procedure. [but these rules shall provide, inter alia, that]

"2. The Committee shall elect its officers for a term of two years.

"3. The Committee shall normally meet annually in order to consider the reports submitted in accordance with article 72 of the present Convention.

"4. The meetings of the Committee shall normally be held at United Nations Headquarters."

71. For the consideration of article 74 the Working Group based its discussion on a proposal for article 73 contained in document A/C.3/43/WG.I/CRP.5 submitted by Finland, Greece, Italy, Morocco, the Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia, which read as follows:

"1. The Committee shall elect its officers for a term of two years.

"2. The Committee shall normally meet annually in order to consider the reports and other relevant information submitted in accordance with article 72 of the present Convention.

"3. The meetings of the Committee shall normally be held at United Nations Headquarters.

"4. The Committee shall adopt its own rules of procedure."

72. During the consideration of article 74, the debate focused mainly on the extent to which the Committee should draw up its own rules of procedure, rather than having them predetermined by the Convention.

73. The representative of the Federal Republic of Germany said that the proposals of the MESCA group for article 73 contained in A/C.3/43/WG.I/CRP.5 were based on

article 39 of the International Covenant on Civil and Political Rights. However there were two omissions. First, there was no mention of whether members would be eligible for re-election. Second, nothing was stated on matters of the quorum or majority.

74. The representative of Finland, speaking on behalf of the MESCA group, explained that matters dealing with a quorum were not included in its text, as it was felt that the proposals should not deviate too much from the text contained in document A/C.3/43/WG.I/CRP.1/Rev.1. The proposal did not need to refer to re-election.

75. The representatives of Algeria, Germany, Federal Republic of, Italy, Senegal and Yugoslavia held the view that the Committee should be able to adopt its own rules of procedure. They referred to article 10 of the Convention on the Elimination of Racial Discrimination and article 19 of the Convention on the Elimination of All Forms of Discrimination against Women.

76. The representative of Finland stated that it was redundant to speak of re-election. The representative of Sweden agreed, adding that it was obvious that members could be re-elected.

77. The representatives of China, Finland and the Soviet Union expressed the view that the Convention should not be burdened with excessive details.

78. Regarding paragraph 2, the Chairman suggested that, in view of the text already adopted, the words "in order to consider the reports and other relevant information submitted in accordance with article 72 of the present Convention" could be deleted. The representative of Morocco suggested reversing the order of the paragraphs so that paragraph 4 would be paragraph 1.

79. After a brief discussion, the Chairman read out the text of article 74 as revised and the Working Group adopted it on second reading as article 74.

80. The text of article 74, as adopted on second reading, reads as follows:

#### Article 74

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### Article 75 (former article 74 of the first reading)

81. The Working Group considered article 75 at its 3rd to 5th meetings, on 31 May and 1 June 1989, on the basis of the text of article 74 proposed by Finland,



Greece, Italy, the Netherlands, Norway, Portugal, Spain, Sweden and Yugoslavia (A/C.3/43/WG.I/CRP.5), which read as follows:

"1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party considers that another State Party is not giving effect to the provisions of this Convention. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following paragraphs.

"2. If a State Party to the present Convention considers that another State Party is not giving effect to the provisions of this Convention, it may by written communication, bring the matter to the attention of the Committee. The Committee shall then transmit the communications to the other State Party concerned. This State shall, within three months, submit to the Committee written explanations or statements clarifying the matter and the remedy that may have been taken by that State.

"3. If within six months of the Committee's transmission of the initial communication to the State Party concerned the matter is not adjusted to the satisfaction of both Parties, either State shall have the right to request the Committee to deal with the matter in accordance with the following paragraphs of this article.

"4. The Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the present Convention.

"5. The Committee shall hold closed meetings when examining communications under this article.

"6. In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in paragraph 3, to supply any relevant information.

"7. The States Parties concerned, referred to in paragraph 3, shall have the right to be heard by the Committee and to make submissions in writing.

"8. The Committee shall, within twelve months after the transmission of the initial communication under paragraph 3, submit a report:

"(a) If a solution within the terms of paragraph 6 is reached, the Committee shall confine its report to a brief statement of the facts and the solution reached;

"(b) If a solution within the terms of paragraph 6 is not reached, the Committee shall confine its report to a brief statement of facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

"The report shall be communicated to the States Parties concerned."

82. While noting that, for political and other considerations, States' complaint procedures were not always the most effective means of ensuring the implementation of the Convention, the representative of the Netherlands stated that he could accept a compulsory State complaint procedure as suggested by some delegations. In that case, however, it would be only logical to include an optional procedure for individual communications. He therefore proposed incorporating a provision similar to article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, reading as follows:

"1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

"2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

"3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

"4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

"5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

"(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

"(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

"6. The Committee shall hold closed meetings when examining communications under this article.

"7. The Committee shall forward its views to the State Party concerned and to the individual.

"8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration."

83. In introducing the proposal on behalf of the MESCA group, the representative of Finland indicated that the main difference between the proposed text and the text adopted during the first reading was that the proposed text sought to establish an optional States' complaints procedure whilst the first-reading text provided for a mandatory procedure.

84. The representative of Mexico, while explaining her difficulties with the MESCA proposal, stated that the proposed article 75, paragraph 1, raised two issues: first, whether the nature of the suggested recourse was to be optional or obligatory and, second, the question of reciprocity of inter-State complaints.

85. The representative of the Federal Republic of Germany said that his delegation was able to support the MESCA proposal but opposed both a mandatory States' complaints procedure and even an optional procedure for individual complaints. While it attached great importance to the principle of mandatory State complaint combined with optional individual complaints as established in other international human rights agreements, it did not consider such a procedure suitable for the present Convention, which imposed a large number of sometimes very detailed obligations on States relating to the rights of migrant workers and their families in areas such as labour relations, employment, social security, residence and schooling. He also felt that a mandatory procedure would discourage potential States parties from ratifying the Convention. The representative of Japan also expressed support for the idea contained in the proposed text, but suggested bringing the wording closer to that used in the corresponding provisions of the Convention against torture (art. 21).

86. The representative of the United States expressed support for the MESCA proposal as amended by the representative of Japan. The representatives of Italy, France and Sweden also expressed support for the MESCA proposal since it sought to establish a more flexible complaints procedure and, in so doing, the Convention might attract the maximum number of States to accede to it. The representatives of

Italy and France stressed that the Convention should not be drafted in such a way that a solitary provision could hinder the rest of the Convention from being acceded to by States.

87. The representatives of Morocco, Algeria and China expressed a preference for the text adopted during the first reading. The representative of Morocco questioned whether the new proposal would not be a step backward as compared to the text adopted. The representatives of Algeria and China indicated that they preferred a mandatory States' complaints procedure as that would ensure effective implementation of the Convention.

88. The representative of Morocco sought to reassure participants who criticized the rigid nature of the procedure contained in the first-reading text by stating that a States' complaint procedure was not, strictly speaking, mandatory. Such a procedure did not mean that States aware of ineffective implementation of the Convention by a State Party had to raise a complaint about that State, but rather that they had a right to do so. The representatives of Italy and the Federal Republic of Germany thought that the procedure should be viewed from the perspective of an accused State which, under the mandatory system, could not avoid having complaints made against it. Therefore they maintained their criticism of the procedure in the first-reading text for its inflexibility.

89. The representatives of Japan, Norway and the Soviet Union supported the text proposed by the Netherlands and agreed on the substance of the proposal. They pointed out its flexible approach in view of the length and costs of procedures dealing with individual complaints. The representative of the United States also generally supported the text and further noted that mandatory State-to-State procedures might result in fewer ratifications. The representative of Norway pointed out his flexible approach to the text proposed by the Netherlands, but added that the cost of a procedure dealing with individual complaints should be considered.

90. The representative of the Soviet Union stated that he could support both formulations and also noted that a mandatory machinery might prevent some countries from ratifying the Convention. That view was shared by the representative of Yugoslavia.

91. Speaking on paragraph 2 of the MESCA text, the representative of Japan proposed replacing the words "is not giving effect" by the words "is not fulfilling its obligations".

92. The representative of Sweden, in supporting the representative of the Netherlands, stressed the importance of establishing a dual monitoring system for inter-State complaints and individual communications. He compared it with the optional character of article 41 of the International Covenant on Civil and Political Rights and with the Optional Protocol thereto.

93. The representative of Morocco hailed the support lent by the Netherlands and Sweden to the idea of inter-State complaints. She suggested that two separate articles should be drawn up: one on the competence of the Committee to entertain

inter-State complaints, and the other on how the Committee would follow up such complaints if the State concerned had accepted its competence in the matter.

94. The Chairman asked the observer for ILO about the inter-State procedure applied under ILO instruments. The representative of ILO pointed out that as a general rule inter-State complaints were allowed if both States had ratified the instrument.

95. The representative of Australia indicated that his delegation could accept the text proposed by the MESCA group.

96. The representative of China supported a mandatory monitoring mechanism in order to increase the value of the instrument.

97. The representative of Algeria stated that the scope of the proposed article 75, paragraph 1, was restrictive and expressed concern regarding the inclusion of an escape clause. She also expressed support for the incorporation of a new provision to deal with complaints by individuals.

98. The representative of Italy urged the Working Group to weigh the interests of establishing principles accepted by a large number of States versus the interests of a compulsory jurisdiction.

99. The representative of Morocco stressed the optional character of the proposed text. She considered the right of States Parties to submit inter-State complaints to be an absolute right.

100. The representative of France said that the future impact of the Convention ought to be taken into consideration before incorporating a mandatory monitoring system. If the result would be a lesser number of ratifying States or if States would ratify the instrument with reservations, then it would be better to keep the machinery optional.

101. The representative of Finland indicated that his delegation held a flexible position as to adopting either a mandatory or an optional States complaint procedure. He was also in favour of including an optional individual complaint procedure. In his view, the submission of individual communications to the supervising body was the only way of testing the effective implementation of the Convention.

102. In view of its inability to agree on a text for article 75, the Working Group decided to postpone further consideration of article 75 and to take it up in informal consultations.

103. At the 5th meeting, the Working Group resumed consideration of article 75.

104. The representative of Italy questioned whether article        was a provision for the settlement of disputes and if the Committee would be empowered to make compulsory legally binding settlements to the dispute.

105. The representative of Democratic Yemen said that the Committee could not be turned into a mediating body. It could not use its good offices between States and therefore States were able to settle disputes as they liked.

106. The representative of France pointed out that article 75 as currently formulated enabled States to avoid controls. The decision on whether article 75 should be mandatory or optional was a political one.

107. The representative of Morocco pointed out that article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination contained the mandatory principle and most States had agreed to it.

108. The representative of the Federal Republic of Germany expressed his support for the incorporation of a mandatory procedure and stressed that the interests of both States parties involved in an inter-State procedure had to be taken into account. He also addressed the financing of the Committee.

109. After a brief debate, the Working Group agreed to defer further consideration of article 75 and decided to hold further informal consultations on that article.

Article ... (former article 75 of the first reading) (to be renumbered)

110. The Working Group considered a text for the article at its 4th meeting, on 31 May 1989, on the basis of the text in the left-hand column of document A/C.3/43/WG.I/CRP.1/Rev.1, reading as follows:

"The provision of the present Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with international agreements in force between them."

111. The representative of Finland, supported by the representative of Italy, proposed an amendment to the text of the proposed article by replacing "the present Convention concerning the settlement of disputes or complaints" by "article 75 shall be applied without prejudice". He further addressed the *res judicata* issue under the provision and suggested: "article 75 does not prejudice the recourse to any other procedure".

112. The representative of the Federal Republic of Germany suggested that the article should read as follows:

"The application of article 75 shall not preclude States Parties from having recourse to other procedures for settling a dispute in accordance with international agreements in force between them."

113. The representative of Morocco also took the view that the text could be limited to the question of not preventing recourse to other procedures because that was the principal goal of the article.

114. The representative of Italy suggested further amending the text by deleting the words "shall be applied without" so that the text should commence with the words "Article 75 does not prejudice recourse to any other procedures". He indicated that that was to make it clear that States could be involved in a dispute or complaint settlement procedures at the same time. He suggested that the terminology of the article would be more consistent with article 44 of the International Covenant on Civil and Political Rights. The representative of Australia supported the move to bring the text more closely in line with the terminology of article 44 of the International Covenant on Civil and Political Rights and suggested that, in order to meet the concern of the representative of Italy, the text in document A/C.3/43/WG.I/CRP.1/Rev.1 could be changed to read "shall apply" instead of "shall be applied". However, he indicated that he could support the text as originally contained in document A/C.3/43/WG.I/CRP.1/Rev.1.

115. The representative of the Soviet Union suggested that referring to article 75 before its contents were decided upon could cause confusion later and therefore suggested the retention of the original text contained in document A/C.3/43/WG.I/CRP.1/Rev.1. He took the view that there was no reason why the word "dispute" should not be in the text because it was contained, *inter alia*, in the equivalent provision in the Convention on the Elimination of All Forms of Racial Discrimination (art. 16) and because when States disagreed over an issue that situation could be described as a dispute.

116. Similar views were expressed by the representatives of Algeria and Australia. They said that the article should be adopted as originally proposed. The representative of Algeria added that the reference to article 75 created a problem since it implied a right to recourse to two procedures at the same time. The representative of Australia also made reference to Article 33 of the Charter of the United Nations on settlement of disputes and urged the Working Group to adopt a cautious approach.

117. The representative of France stated that his delegation could agree with the substance of the proposal.

118. The representative of Morocco stated that the purpose of the article was not to prevent another international procedure from dealing with the matter and proposed keeping only the last phrase of the article.

119. The representative of Italy, supported by the representatives of Australia and Egypt, proposed the wording "shall apply" instead of "shall be applied" and referred to article 44 of the International Covenant on Civil and Political Rights.

120. The representative of Colombia said that Article 33 of the Charter, on the peaceful settlement of disputes, did not refer explicitly to the possibility of using good offices. He would like the provision under discussion to be simplified.

121. The representative of Egypt expressed concern over the retention of "settlement of disputes" owing to its wide application. He questioned the extent of the applicability of a text based on article 44 of the International Covenant on Civil and Political Rights because, in limiting itself to dispute settlements in accordance with international "agreements in force" between the disputants, the article would not be applicable to a situation where a State Party was in dispute with a State not a party to the Convention and with which it had not entered into an agreement.

122. After further discussion, the Working Group decided to postpone consideration of article 75 of the first reading and to take it up in connection with the discussion on article 75 (former article 74) at its next session.

Article 76 (adopted without a number at the second reading)

123. At its 4th meeting, on 31 May 1989, the Working Group considered the placement of former article 37 of the first reading which had been adopted without a number during the second reading (see document A/C.3/43/1, paras. 11, 12 and 22, and which reads 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.

124. The Working Group decided that former article 37 which had been adopted during the second reading without a number should be numbered article 76.

125. Regarding that article, the representative of Sweden wished to place on record that his delegation had been opposed to it and would have preferred not to begin part VIII of the Convention with that article.

Article 77 (former article 76 of the first reading)

126. At its 4th meeting, on 31 May 1989, the Working Group considered the text of article 76 as it had been adopted during the first reading, contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention."

127. The representative of Finland proposed removing the article from part VII and including it in part VIII of the draft Convention relating to general provisions.

128. The Working Group agreed to that proposal and decided to adopt the article which would become article 77.



129. The text of article 77 as adopted on second reading reads as follows:

Article 77

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

PART VIII

General provisions

Article 78 (former article 77 of the first reading)

130. The Working Group took up article 78 on the basis of article 77 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. No provision in this Convention shall affect any rights or freedoms afforded to migrant workers and members of their families by virtue of:

"(a) The law [, legislation] or practice of a State Party; or

"(b) Any international treaty in force for the State Party concerned.

"[2. No provision in the present Convention may be interpreted as authorizing any State, group or person to engage in any activity or perform any act that would impair any of the rights or freedoms recognized herein [or introduce limitations based on the present Convention].]"

"[2. Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.]"

131. During the consideration of that article the Working Group had before it amendments reproduced in document A/C.3/44/WG.I/CRP.3 which consisted in deleting the word "legislation" in paragraph 1 (a) and inserting the words "and regulations" after the words "The law". Regarding paragraph 2 of article 78, the amendment proposed by Japan was to use the text in the right-hand column of article 77 of the first reading.

132. The representative of Finland expressed concern that, as adopted during the first reading, the chapeau to paragraph 1 indicated that the Convention would not in any way affect legislation adopted by States prior to acceding to the Convention, whether such legislation was consistent with the standards of the Convention or not. To avoid that situation he suggested that the text be brought closer in line with the equivalent provision in the Convention on the Elimination

of All Forms of Discrimination against Women (art. 23). With reference to paragraph 1 (a), he expressed a preference for the word "legislation" rather than "law" and as regards paragraph 2 he expressed a preference for the text in the right-hand column.

133. The representative of the Federal Republic of Germany suggested that the use of the word "legislation" would be preferable to the word "law" in paragraph 1 (a). With reference to paragraph 2, he expressed a preference for the text in the left-hand column because, in speaking only of the "destruction" of rights, the text in the right-hand column did not cover the violation of rights which had not destroyed them.

134. The representative of Venezuela expressed her preference for the word "legislation" and the expression "activity that would impair" in paragraph 2 of the left-hand column in order to ensure a higher degree of protection for migrant workers.

135. The representative of Yugoslavia suggested that paragraph 2 of the text in the right-hand column should form the basis of the provisions of paragraph 2 of article 78 since the future Convention, by the very nature of things, should not change existing international mechanisms for the protection of human rights in general, and of migrant workers in particular, if the existing provisions on that matter were not less favourable for migrant workers. With respect to bilateral agreements and any other type of agreement, for instance, if States in question accept the present Convention, its provisions would apply.

136. After a brief discussion, and upon the Chairman's suggestion, the Working Group decided to take the article up in informal consultations.

137. At its 5th meeting, on 1 June 1989, the Working Group resumed consideration of article 78. The Chairman read out a text for article 78, paragraph 1 and subparagraphs (a) and (b), which had emerged from informal consultations, reading as follows:

"1. No provision in the present Convention shall affect any rights or freedoms afforded to migrant workers and members of their families by virtue of:

"(a) The law and practice of a State Party; or

"(b) Any international treaty in force for the State Party concerned."

138. The representative of Australia suggested that the word "afforded" in paragraph 1 be replaced by "granted".

139. The representative of Finland suggested that the word "and", in the phrase "the law and practice" of subparagraph (a) be replaced by "or".

140. The representative of Japan said that his delegation would like to insert the word "regulation", which was customarily used in Japan.

141. The Chairman read out a text for article 78, paragraph 2, which had emerged from informal consultations, as follows:

"Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity that would impair any of the rights and freedoms set forth herein or limit such rights and freedoms to a greater extent than is permitted for in the Convention."

142. The representative of Italy, supported by the representative of Portugal, stated that paragraph 2 was based on article 5 of the International Covenant on Civil and Political Rights, yet he questioned the logic of including in paragraph 2 only half of article 5, namely omitting the reference to the "destruction of any of the rights and freedoms recognized herein".

143. The representatives of Morocco and Algeria expressed the view that, with reference to paragraph 2, it was inappropriate to bring in the notion that there were limited rights. Its introduction was negative. International conventions should be positive instruments.

144. The representative of Algeria said that if some delegations insisted on retaining the notion of limits to the rights and freedoms set forth in the Convention, as in the provision accepted in first reading, she would be unable to agree to the deletion of the phrase "destruction of any of the rights and freedoms" in that same provision, because the two ideas obviously complemented each other. As she saw it, the proposed phrase "impair any of the rights or freedoms" was general in meaning and covered violations of the rights accorded under the Convention as well as excessive limits, which she thought more appropriate. On the strength of that interpretation, she said she could under no circumstances endorse a move to pick and choose among the two versions of the provision, leading to the discarding of the question of the destruction of rights and freedoms recognized by the future Convention.

145. The representatives of Algeria, Morocco and Sweden expressed the view that the word "impair" covered both destruction and limitation. The representative of Sweden pointed out that the Covenant spoke of "destruction" of rights whereas the proposal for paragraph 2 had the word "impair".

146. After some debate, the Chairman read out a text for paragraph 2 of article 78, which was adopted by the Working Group as follows:

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

147. At the same meeting, the Working Group adopted article 78 as a whole on second reading as follows:

Article 78

1. No provision in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

(a) The law or practice of a State Party; or

(b) Any international treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

Article 79 (former article 78 of the first reading)

148. The Working Group considered a text for article 79 at its 5th meeting, on 1 June 1989, on the basis of the text of article 78 adopted on first reading contained in document A/C.3/39/WG.I/WP.1, which read as follows:

"The rights provided for in this Convention shall not be capable of renunciation. [It shall be unlawful to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights.] [Any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights shall be subject to penalties.] [No form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the same rights shall be permitted.] Any provision in any agreement or contract [the effect of which is] [implying] the relinquishment or foregoing of any of the said rights shall be void."

149. The representative of Finland, speaking on behalf of the MESCA group and other delegations, introduced an abridged version of article 79, which read as follows:

"The rights provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights."

150. During the discussion of the article, the representative of Morocco stated that, since it was the one dealing with pressure, it would be strengthened if the text first stated what was prohibited, before referring to the forms of pressure exerted upon migrant workers with a view to their relinquishing their rights.

151. The representative of the Federal Republic of Germany said that his delegation could accept only the third sentence of article 78 as worded during the first reading, because a ban on relinquishing any of the rights accorded under the Convention could be interpreted as conferring on those rights the status of

individual rights. In his delegation's view, the Convention contained only obligations upon States. His delegation thought the idea of "pressure" too imprecise: it might give rise to undesirable interpretations. Nevertheless, he would not go against the consensus in the Working Group provided his delegation's position was duly reflected in the report.

152. The representative of the Netherlands expressed his doubts over the phrase "shall not be permissible". He proposed using the phrases "States Parties shall take effective measures" and "States Parties shall not derogate".

153. The representative of Japan proposed rewording the first part of the article to read: "Migrant workers and members of their families shall not be deprived of the rights provided for in the present Convention." As proposed in document A/C.3/44/WG.I/CRP.3, he suggested replacing the word "penalties" by the words "appropriate sanction including penalties". He also suggested deleting the last sentence and replacing it by the following:

"Any provision in any agreement or contract implying the relinquishment or foregoing of any of the said rights which resulted from pressure upon migrant workers and members of their families shall be void."

154. The representative of Algeria also voiced misgivings about the expression "shall not be permissible". She endorsed the Netherlands proposal to clarify the intent of the provision because, in her view, it was most important to stipulate that it was the responsibility of the States parties concerned to take such action as was needed to prevent pressure from being put on migrant workers and their families.

155. The representative of Italy noted that article 79 as formulated was vague, in that who was to take effective measures to prohibit pressure on migrant workers and their families was not explicitly stated. Similar views were expressed by the representative of China.

156. The representative of Italy proposed that each of the three suggested sentences of article 79 should be preceded by the words "The State Parties", to ensure clarification of the responsible subject. The Chairman said that during informal discussions the phrase had intentionally been kept vague. It was felt that it was useful to do so, so that the various contingencies could be covered.

157. The representatives of the Soviet Union and Australia expressed the view that, under international law, the subject could be only a State. According to the doubts expressed by some delegations all international treaties would have to be so clarified.

158. The representative of Canada pointed out that article 79 dealt with questions relating to contractual law, which in his country fell largely within provincial jurisdiction. In some cases, legislation had been adopted to address those types of problems and, in others, the law in effect was the common law set by the courts. As the subject-matter of article 79 fell largely within provincial jurisdiction, the wording of the obligation for the State, as set out in the

article, would have to be both precise and realistic or it could pose difficulties for States such as Canada, where there were 13 separate jurisdictions.

159. The Chairman suggested that a sentence could be added to the article stating categorically that the State parties should take effective measures to ensure that the principles of the article were respected.

160. The representative of Italy stated that he had difficulty with the phrase "principles must be respected in practice". Rather, he pointed out, logically principles should be respected in law because renunciation of a right was a legal point and not a point of practice.

161. The representative of Japan agreed with the comments of the representative of Italy as, without that clarification, the article might be interpreted as denoting that States were responsible only for their practice and not for implementation of their laws.

162. The representatives of Australia and Finland suggested that the difficulties of the Italian and Japanese delegations with the distinction between practice and law could be resolved by deleting the word "practice", thus leaving the sentence to read: "States Parties shall take the appropriate measures to ensure that these principles are respected."

163. The representative of Japan suggested that the word "shall" in the first line be replaced by the word "may".

164. The Chairman read out a text for article 79 as revised, as follows:

"The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected."

165. At the same meeting, the Working Group adopted a text for article 79 on second reading.

166. The text of article 79, as adopted on second reading, reads as follows:

Article 79

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that these principles are respected.

Article 80 (former article 79 of the first reading)

167. The Working Group considered a text for article 80 at its 6th and 7th meetings, on 1 and 2 June 1989, on the basis of article 79 of the first reading, contained in document A/C.3/39/WG.I/WP.1 reading as follows:

"Each State Party to the present Convention undertakes [in accordance with its constitutional processes and with the provisions of the Convention]:

"(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

"(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

"(c) To ensure that the competent authorities shall enforce such remedies when granted."

168. The Working Group had also before it a proposal by Japan contained in document A/C.3/44/WG.I/CRP.3, in which it was proposed to delete the words in brackets in the introductory phrase of the proposed article 80.

169. The representative of Finland suggested that the introductory phrase should end after the word "undertakes".

170. After a brief discussion the Working Group agreed to delete the words in brackets in the introductory phrase and adopted it on second reading as follows:

Each State Party to the present Convention undertakes:

171. The Working Group decided on second reading to adopt subparagraph (a) as it stood, which reads as follows:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

172. The representative of the Federal Republic of Germany stated that article 80 (b) presented some similarity with article 2, paragraph 3, of the International Covenant on Civil and Political Rights. His delegation would prefer the formulation of the two Covenants, unless the specific circumstances of migrant workers might require a derogation from those texts. The representative of Sweden, supported by the representative of Australia, said he was content with the existing draft and did not see any need for derogation.

173. The representatives of Algeria and Morocco considered the drafting of the article to be academic and obscure. They felt that there was a need to record it in more specific and clarified terms.

174. The representative of Italy urged the Working Group to take a cautious approach as the purpose of the article was to guarantee judicial recourse before the national authorities to a migrant worker whose rights had been violated, in order to review and determine whether there had been a breach of the rights set out in the Convention.

175. The representative of France suggested the deletion of the article if, under the provision, the protection for the migrant workers was going to be less than that provided for under the International Covenant on Civil and Political Rights.

176. During the discussion, various speakers pointed out the linguistic discrepancies that existed between the French and Spanish versions of the text.

177. In that regard, the representative of Canada stated that the intention of the Working Group, when rephrasing the French and the Spanish texts, was not to derogate in substance from the protection provided for under the same provision of the Covenant, merely to clarify it.

178. The representative of Morocco voiced reservations about the wording of the article and stressed that it should guarantee the victims of violations that their complaints would be considered in order that they might obtain a remedy.

179. In an attempt to reach consensus, the representative of the United States suggested rephrasing subparagraph (b) in such a way so as not to change the meaning of its provisions but merely to clarify them:

"To ensure that any person seeking such a remedy shall have his claim reviewed and decided by competent judicial, ...".

180. The representatives of Algeria, Australia, Greece and Sweden stated that such a formulation would be acceptable to their delegations.

181. The representative of Sweden suggested that the subparagraph should be adopted as amended by the United States.

182. The Chairman suggested that the French- and Spanish-speaking delegations should hold informal consultations regarding the translation of the article.

183. The Working Group resumed consideration at its 7th meeting, on 2 June 1989, and had before it the English, French and Spanish texts of article 80, as they had emerged from the informal consultation.

184. After a brief discussion the Working Group adopted on second reading the English, French and Spanish texts of article 80 as revised.



185. Article 80 as adopted on second reading reads as follows:

Article 80

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person seeking such a remedy shall have his claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 81 (former article 80 of the first reading)

186. The Working Group considered a text for article 81 at its 6th meeting, on 1 June 1989, on the basis of article 80 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"Each State Party undertakes [in accordance with its constitutional processes and the provisions of this Convention] to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention."

187. During the consideration of this article the Working Group also had before it a proposal by Japan contained in document A/C.3/44/WG.I/CRP.3, by which the text of article 80 of the first reading would be replaced by the following:

"Where not already provided for by existing legislation or other measures, each State Party to the present Convention undertakes to take the necessary steps, [in accordance with its constitutional processes and with the provisions of the present Convention,] to adopt such legislative and other measures as may be necessary to implement the provisions of the present Convention."

188. Turning to the text of article 80 of the first reading, the Chairman suggested that the words in brackets could be deleted as they were redundant.

189. While expressing his support for the proposal by Japan, the representative of the Federal Republic of Germany suggested replacing the word "necessary" by the word "appropriate".

190. The representative of Yugoslavia stated that, although her delegation realized that the proposal of Japan was based on article 2, paragraph 2 of the International Covenant on Civil and Political Rights, she would prefer the wording of article 81 as suggested by the Chairman.

191. In supporting the remarks made by Yugoslavia, the representative of Finland stated that there was no reason to consider the article redundant.

192. The representative of the Soviet Union noted that, in that particular situation, adopting the wording of the Covenant would create difficulties although the idea of Japan was justified in the context of the Covenant.

193. The representative of Italy suggested retaining the word "necessary" or else the article would be superfluous.

194. The representatives of Algeria, Greece and China expressed their support for the text as revised by the Chairman.

195. After some discussion, the Working Group adopted article 81 on second reading as revised by the Chairman.

196. The representative of Japan wished to place on record that his delegation did not want to hinder the consensus and agreed to go along with the text of article 81 as adopted on second reading by the Working Group. The delegation of Japan maintained that the order of articles 80 and 81 should be reversed.

197. The representative of the Federal Republic of Germany also placed on record the position of his delegation, stating that it supported the proposal by Japan but would have preferred replacing the word "necessary" by the word "appropriate". However, in order not to block the consensus, it would accept its position being reflected in the report.

198. The text of article 81 adopted on second reading by the Working Group reads as follows:

Article 81

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

Article 81 of the first reading

19' At its 6th meeting, on 1 June 1989, the Working Group took up consideration of article 81 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"States Parties to the present Convention shall remain free to conclude bilateral or multilateral agreements, subject to no limitations other than those provided for in this Convention [with a view to]:

"[(a) Resolving such problems as may arise from its implementation, in particular situations in matters such as social security, model employment contract and the validity of certificates and documents;]

"[(b) Ensuring the fair and just treatment of all migrant workers and members of their families.]"

200. The representative of Italy indicated that any provision should leave open the possibility of States parties entering into bilateral and multilateral agreements. For this reason he suggested that the entire text in brackets from the first reading should be deleted. In that regard the delegations of Yugoslavia and Italy declared that the absence of a provision which explicitly permitted bilateral or multilateral agreements among the parties in matters related to the Convention could not be interpreted as a derogation from the general rules of international law, as expressed in the Vienna Convention on the Law of Treaties, which permitted such agreements.

201. The representative of the Soviet Union expressed dissatisfaction with the text as adopted during the first reading and suggested that the Working Group should delete it and leave the issue regulated by the relevant article of the Vienna Convention on the Law on Treaties instead. The representatives of Finland, Japan, the Netherlands and the United States were also of the view that the provision should be deleted as it did not add anything to the Convention that would not be the case otherwise, i.e., the question of agreements between States would be regulated by general provisions of international law.

202. In addition, the representative of the Netherlands expressed dissatisfaction with the text as adopted during the first reading because the list of examples on which agreements could be entered into appeared arbitrary. The representative of Finland criticized the first-reading text because it did not recognize that agreements could be limited by provisions contained in international instruments other than the present Convention. He also mentioned that the type of provision under consideration was unnecessary because the desire of the Working Group to ensure that States parties did nothing to undermine the rights guaranteed by the Convention would be covered by the text adopted for article 78 on the rights and freedoms of migrant workers and their families.

203. The representative of Morocco supported the deletion of article 81 as adopted on first reading because its provisions were an unnecessary interference in the right of sovereign States to conduct their affairs as they wished. The representative of Japan expressed a similar opinion.

204. For the reasons outlined above, the representatives of China, Greece, Sweden and the United States supported the deletion of the article.

205. In view of the discussion the Working Group decided to delete article 81 as adopted during the first reading.

## PART IX

### Final provisions

#### Article 82

206. The Working Group began its consideration of part IX of the draft Convention on second reading, at its 6th meeting on 1 June 1989, and took up article 82 on the

basis of article 82 of the first reading contained in document A/C.3/39/WG.I/WP.1, as follows:

"1. The present Convention shall be open for signature by all States. It is subject to ratification, acceptance or approval.

"2. The present Convention shall be open to accession by any State referred to in paragraph 1 of this article.

"3. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations."

207. Regarding paragraph 2, the representative of Finland proposed ending the paragraph after the words "any State".

208. The representative of Australia proposed replacing the words "all States" by the words "any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Convention" as formulated in article 26, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, on the grounds that that would provide greater clarity and specificity and would reflect the United Nations context of the elaboration of the Draft Convention.

209. The representative of Mexico insisted that if such a proposal were to be retained he would request that it be put in brackets on second reading.

210. The representatives of the United States and Canada stated that the proposal by Australia could be acceptable to their delegations although they were flexible regarding the wording of "all States". The representative of the United States said, with reference to any use of the word "State", that his delegation could accept it only on the understanding that the concept of statehood was as defined by applicable criteria of international law, including the necessity for a State to exercise governmental control over the territory it claimed as its own.

211. The representative of Finland, supported by the representatives of Italy, Morocco, Sweden and the Soviet Union, suggested deleting the reference to national law and stated that ratification included all national legal forms of acceding to international instruments. He also stressed the importance of a universal convention open to all States, even to States not members of the United Nations, such as Switzerland.

212. The representative of the Soviet Union proposed using the wording from article 25 of the Convention on the Elimination of All Forms of Discrimination against Women.

213. The representatives of Finland, Italy, Morocco and Sweden questioned the need to retain the words "acceptance or approval". The representative of Sweden drew the Working Group's attention to an opinion by the United Nations Legal Counsel that the concept of ratification covered acceptance or approval.

214. In an effort to reach a compromise on the proposed text for article 82, the delegations of Canada and Greece urged the delegation of Mexico not to encourage brackets on text agreed upon on second reading. They suggested that an attempt should be made to solve the problems the article posed for some delegations by holding informal consultations.

215. Following that suggestion, the Working Group agreed to take up article 82 in informal consultations.

216. At its 7th meeting, the Working Group resumed consideration of article 82.

217. The representative of Australia explained that in the interest of progress and consensus he would not insist on his proposal.

218. The Chairman read out the text for article 82 that had emerged from the informal consultations. The Working Group decided to adopt it on second reading as article 82.

219. The text of article 82 as adopted on second reading by the Working Group reads as follows:

#### Article 82

1. The present Convention shall be open for signature by all States. It is subject to ratification.
2. The present Convention shall be open to accession by any State.
3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

#### Article 83

220. The Working Group considered a text for article 83 on second reading at the 6th and 7th meetings, on 1 and 2 June 1989, on the basis of article 83 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the fifteenth instrument of ratification, acceptance, approval or accession.

"2. For each State ratifying the present Convention or acceding to it after the deposit of the fifteenth instrument of ratification, acceptance, approval or accession, it shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification, acceptance, approval or accession."

221. During the consideration of that article, the Working Group had before it an amendment proposed by Japan, contained in document A/C.3/44/CRP.3. In that

proposal the delegation of Japan suggested substituting the word "fifteenth", in paragraph 1, by a figure higher than the twentieth. Japan also proposed to reword paragraph 2 to read:

"2. For each State ratifying, accepting, approving or acceding to the present Convention after its entry into force, it shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification, acceptance, approval or accession."

222. After a brief discussion, the Working Group agreed that the few drafting problems that the article might raise could be resolved in informal consultations. The Working Group thus decided to take up article 83 in informal consultations.

223. At its 7th meeting, the Chairman read out the text for article 83 which emerged from the informal consultations, as follows:

"1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

"2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession."

224. After a brief discussion, the Working Group agreed to adopt the above text as article 83.

#### Article 84

225. At its 7th meeting, on 2 June 1989, the Working Group took up consideration of a text for article 84 on the basis of article 84 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. Where a State Party is constituted as a federal State, the national Government of such State Party shall implement all the provisions of the present Convention over whose subject-matter it exercises jurisdiction.

"2. With respect to the provisions over whose subject-matter the constituent units of the federal State have jurisdiction, the national Government shall immediately take suitable and effective measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units adopt appropriate measures for the fulfilment of the present Convention."

226. The representative of the United States expressed support for the text adopted during the first reading on the basis that it would greatly facilitate the ratification of the Convention by federal States. The representative of ILO drew the attention of the Working Group to the fact that the ILO Constitution contained

such a clause. The representative of the Federal Republic of Germany stated that his delegation could accept either the deletion or retention of the article.

227. The representatives of Canada, Finland, Italy, Japan, the Netherlands and Sweden, took the view that there was no need for a clause explicitly covering the issue of ratification by States with a federal structure because in ratifying the Convention it would be up to federal Governments to ensure that its constituent States implemented the provisions of the Convention. In addition, the representative of Canada stated that, with the exception of the Convention relating to the Status of Refugees, it was unusual for human rights instruments to contain federal provisions. He further indicated that it was improper to demand that unitary States implement the Convention nation-wide, whilst allowing the constituent parts of federal Governments to be able to avoid implementing the Convention. The representative of the Netherlands also considered it inappropriate to allow parts of countries which had ostensibly ratified the Convention to be able to avoid implementing it. The representative of Finland indicated that that provision could result in migrant workers being treated differently according to which part of a federation they lived in. The representative of Sweden indicated that a federal clause ran counter to the principle of the universality of human rights. He also added that no such clause had been included in any recent human rights instrument. The representative of Australia stated that his delegation could accept either the deletion or retention of a federal clause.

228. In the view of the Moroccan representative, the clause could be so worded as to take account of the concerns expressed by various delegations, but it must require the Convention to be applied throughout a federal State.

229. The representatives of Australia, Canada and Italy pointed out that, if the Working Group chose not to adopt a federal provision, the effect would be that federal States would have to ensure, as a pre-condition for ratifying the Convention, the agreements of their constituent parts to the implementation of the Convention.

230. In view of the Working Group's inability to reach a consensus on whether or not to have a federal provision, and on what form such a provision might take, it decided to suspend further debate on the matter until informal consultations had been carried out.

231. In view of its inability to arrive at a consensus in informal consultations, the Working Group decided to postpone further consideration of a text for article 84 until its next session.

#### Article 85

232. At its 7th meeting, on 2 June 1989, the Working Group considered a text for article 85 on the basis of article 85 adopted during the first reading (A/C.3/39/WG.I/WP.1), which read as follows:

"[85. Any State Party may, at the time of signature, ratification, acceptance, approval or accession or at any other date, declare that the present Convention shall extend to all territories of the international relations for which it is responsible, or to one or more of them. Such declaration shall take effect at the time the present Convention enters into force for the State or, if made subsequently, on the first day of the month following the expiration of a period of three months after the date of the receipt of such declaration by the Secretary-General of the United Nations. Such declarations, as well as any subsequent extension and their withdrawal, shall be notified to the Secretary-General of the United Nations.]"

"[85. The present Convention shall be applicable, in all its terms, in all territories under the effective jurisdiction of States which become Parties thereto. Its provisions should apply at both the national and the local levels and each State Party therefore undertakes to adopt the necessary and effective measures to facilitate such application according to its particular structures and in accordance with its relevant internal procedures.]"

233. The Working Group had also before it a proposal for article 85 contained in document A/C.3/44/WG.I/CRP.3, submitted by Japan, reading as follows:

"Any State Party may, at the time of signature, ratification, acceptance, approval or accession or at any other date, declare that the present Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect at the time the present Convention enters into force for the State concerned or, if made subsequently, it shall take effect for the State concerned on the first day of the month following the expiration of a period of three months after the date of the receipt of such declaration by the Secretary-General of the United Nations. Such declarations, as well as any subsequent extension and their withdrawal, shall be notified to the Secretary-General of the United Nations."

234. During the discussion, the representatives of Australia, the Federal Republic of Germany, Japan and the United States indicated that, of the alternative texts, they preferred the one in the left-hand column but that, since they had no strong feelings, they were quite willing for the entire provision to be deleted. The representative of Yugoslavia expressed a preference for the right-hand-column text but stated that, since she also had no strong feelings, she would be willing to accept the provision's deletion from the draft Convention. In that case, it was the understanding of her delegation that States that ratified the Convention would apply its provisions in accordance with the Vienna Convention on the Law of Treaties.



235. The representatives of those delegations were of the view that the provision should be eliminated from the Convention altogether. The idea contained in the provision was anachronistic, was more suited to the bygone colonial era and could cause controversy. The representatives of Italy and the Netherlands pointed out that the left-hand-column text ran the risk of leaving it open for States, according to a *mala fide* interpretation, to select which of the Territories over which it had jurisdiction it would apply the Convention to.

236. In considering the proposed deletion of article 85 as adopted during the first reading, the representative of the Soviet Union suggested that the Working Group might wish to replace those texts with the provision of the Vienna Convention on the Law of Treaties covering the applicability of conventions ratified by States to the Territories under its jurisdiction. The representatives of Australia, the Federal Republic of Germany, France, Sweden and the United States expressed support for that proposal, although the representatives of Australia, Italy and Sweden felt it to be unnecessary because, if the Convention was silent on the issue of which Territories the provisions would apply to, then the Vienna Convention on the Law of Treaties would be used to clarify the issue anyway.

237. In view of the foregoing, the Working Group decided on second reading to delete article 85 of the first reading on the understanding that the relevant provisions of the Vienna Convention on the Law of Treaties would apply.

238. The delegation of France indicated that it would have preferred to see the adoption of an article 85 based on article 36 of the Convention relating to the Status of Stateless Persons or, if need be, on article 85 (left-hand column) of the draft resulting from the first reading. In order to abide by the consensus, however, it would not oppose the outright deletion of that article.

#### Article 85 (former article 86 of the first reading)

239. At its 8th meeting, on 2 June 1989, the Working Group took up consideration of a text for article 85 based on the texts of article 86 of the first reading (A/C.3/39/WG.I/WP.1), which read as follows:

"[At the time of signature, ratification, acceptance, approval or accession, any State may declare that it shall apply [articles 52, 53, 54, 55 and 56] of the present Convention only in relation to nationals of other States Parties.]"

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

240. In document A/C.3/44/WG.I/CRP.3, the delegation of Japan had proposed retaining the text in the right-hand column for article 86 of the first reading.

241. The representative of the Federal Republic of Germany stated that his delegation supported the inclusion of a clause on reciprocity in the Convention and expressed a preference for the text contained in the right-hand column of the article as adopted during the first reading.

242. The representatives of Algeria, Australia, China, Colombia, Finland, Greece, Morocco, the Netherlands and Sweden indicated that they would prefer that the Convention did not contain a provision on reciprocity, because the concept was inconsistent with the universality of human rights and could lead to discrimination in the treatment by host countries of migrant workers depending upon which country they came from. In addition, the representative of Morocco indicated that the principle of reciprocity would be particularly harmful to nationals of poor or disadvantaged countries.

243. The representatives of Italy and France supported the inclusion in the Convention of a provision on reciprocity. They stated that, because many of the provisions in the Convention dealt with matters other than human rights, stricto sensu, it would not be inappropriate to have a provision on reciprocity since not all provisions should be viewed as having the universal applicability of human rights.

244. In response to that argument, the representative of Australia pointed out that part IV of the text of the Convention adopted on second reading which was referred to in the right-hand version of the article, as adopted during the first reading, contained some provisions related strictly to human rights. He further indicated that, although not all of the provisions drafted by the Working Group related strictly to human rights, the Working Group was endeavouring to draft provisions of universal applicability to migrant workers and their families.

245. The representative of Canada questioned whether, in the light of article 7 of the Convention as adopted during the second reading, it would be possible for the Working Group to include a provision on reciprocity in the Convention. In response, the representative of Norway indicated that he did not consider that article 7 affected the application of articles adopted subsequent to it and that article 7 should always be interpreted bearing in mind the provisions which were adopted after it.

246. The representatives of Norway and Japan both indicated that they had no strong views regarding the retention or deletion of a provision on reciprocity. The representative of Japan indicated, however, that, if the Working Group were to retain a provision on reciprocity, then he would prefer that it take the form of the right-hand version of the texts adopted during the first reading.

247. After some discussion, and in view of the complexities of the provision of the article, the Working Group decided to defer consideration of article 85 to its next session.

#### Article 86 (former article 87 of the first reading)

248. The Working Group considered a text for article 86 at its 8th meeting, on 2 June 1989, on the basis of article 87 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of notification addressed to the Secretary-General of the United Nations.

"2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of the receipt of the notification by the Secretary-General."

249. The Working Group also had before it a proposal submitted by Japan, reading as follows:

"1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations. Denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary-General.

"2. Such a denunciation shall not have the effect of releasing the State Party from its financial obligations under the present Convention which occurred prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

"3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State."

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

251. The Working Group adopted paragraph 1 by incorporating in that paragraph the words "by means of a notification" suggested by Japan, as follows:

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

252. The Working Group decided to postpone consideration of financial matters and turned to paragraph 2 of article 87 of the first reading.

253. The representative of Algeria supported by the representatives of China, Italy, Japan, the Soviet Union and Sweden, suggested that the relevant time period for the entering into force of the denunciation be prolonged to one year instead of the proposed six months.

254. While making reference to article 31 of the Convention against Torture and to the Vienna Convention on the Law of Treaties, the representative of Italy proposed the following text, to become paragraph 3 of article 86:

"The denunciation of the Convention shall not affect the rights acquired by the migrant workers or their families on the basis of the present Convention prior to denunciation."

255. While stressing that the rights of migrant workers must be protected beyond the termination of the State's legal obligations under the Convention, the representative of Finland questioned the need for retaining the expression "acquired rights" in case of denunciation by a State Party. He questioned firstly how acquired rights could be determined and distinguished from ordinary rights deriving from treaty obligation; and secondly how effective protection of them beyond the denunciation's entry into force could be established.

256. The representative of the Federal Republic of Germany felt that that proposal by Italy implied that "rights" other than "acquired rights" would be denounced. The whole concept of acquired rights as formulated in the proposal would allow for the possibility of discrimination.

257. The representative of Sweden, supported by the representative of the Netherlands, suggested that the article could be adopted as drafted in the first reading. He felt that it was not necessary to include in the article a third paragraph regarding the effects of denunciation, since that was regulated by the Vienna Convention on the Law of Treaties.

258. The representative of Norway shared the view expressed by the representative of Sweden that the article should be adopted as drafted in the first reading, and stated that the effect of denunciation of a convention also was regulated by international law and practice. Further, he underlined that the discussion had revealed quite different views regarding the content of the expression "acquired rights". As the proposal by the representative of Italy was a new text in the context of the present Convention, and appeared to have no common meaning, he reserved the position of his delegation until he had been able to consult with his authorities.

259. The representative of Algeria shared the concern expressed by the representative of Italy, and suggested that it should be dealt in a separate subparagraph.

260. Turning to the proposal by Italy, the representative of Greece suggested that the words "prior to the date at which the denunciation comes into force" should be added to the end of the text.

261. After some discussion, the Working Group decided to adopt paragraph 2 of article 86 as follows:

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General.

262. The Working Group adopted article 86 on second reading and decided to leave pending the proposal by Japan relating to a third paragraph for article 86 and the proposal by Italy concerning the question of acquired rights

263. The text of article 86 as adopted on second reading reads as follows:

Article 86

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General.

Article 87 (former article 88 of the first reading)

264. The Working Group considered a text for article 87 at its 8th and 9th meetings, on 2 and 3 June 1989, on the basis of article 88 contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. At any time after five years from the entry into force of the Convention a request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by two thirds of the States Parties shall be submitted to all States Parties for approval.

"2. Approval of amendments shall be communicated by the States Parties to the Secretary-General of the United Nations who shall notify all Parties such communications and, when the amendment has entered into force of which States Parties are bound by it. Amendments shall come into force when they have been accepted by two thirds of the States Parties to the present Convention in accordance with their respective constitutional process."

265. The representative of Japan introduced amendments contained in document A/C.3/44/WG.I/CRP.3, consisting in rewording paragraph 1 and replacing paragraphs 2 and 3 by paragraphs 2 and 3 of article 51 of the International Covenant on Civil and Political Rights, as follows:

"1. After five years from the date of the entry into force of the Convention, a request for the amendment of the present Convention may be made at any time by any State Party to the present Convention by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Convention with a request that they notify him whether they favour a

conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a two-thirds majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval."

"2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Convention in accordance with their respective constitutional processes.

"3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment which they have accepted."

266. The representative of Finland introduced a new proposal for article 87 submitted by the MESCA group of countries, reading as follows:

"1. After the expiration of a period of five years from the entry into force of this Convention any State Party may propose amendments to the Convention by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall communicate forthwith any such proposal to the States Parties with a request that they notify the Secretary-General whether they favour a conference of States Parties for the purpose of considering the proposals. If at least one third of the States Parties favour a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by two thirds of the States Parties present at the Conference shall be submitted to the General Assembly of the United Nations for approval.

"2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Convention in accordance with their respective constitutional processes.

"3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment which they have accepted."

267. The representative of Finland explained that the reason why the MESCA group had chosen a two-thirds majority quorum was mainly to avoid having a majority which could constitute an extremely small number of States adopting amendments which would be binding upon a very large number of States.

268. The representative of the Federal Republic of Germany stated that, in view of the two-thirds majority requirement of paragraph 2, which guaranteed that for an amendment to come into force it would have to be approved by two thirds of the States parties, he could be flexible and support a simple majority for paragraph 1. However, in his view, a two-thirds majority would better ensure that an amendment would not be approved hastily.

269. The representative of Algeria said that, while she had no difficulty with paragraphs 2 and 3, which had been taken from article 51, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights, she could not accept the two-thirds majority referred to in paragraph 1 but would strongly propose that it be replaced by a simple majority.

270. The representative of Morocco agreed with the representative of Algeria and added that paragraph 1 of the Covenant entailed a simple majority.

271. The representative of Italy pointed out that in the General Assembly the required majority for amendments was two thirds and therefore for consistency the same should be kept in paragraph 1. He added that article 51 of the Covenant referred to a majority but did not specify which, so it could be left to the rules of procedure of the Committee to determine.

272. The representative of Canada stated that, while he could accept a two-thirds majority, he could also accept a simple majority. In his view, any amendment adopted at that stage was still subject to approval by the General Assembly and acceptance by two thirds of the States parties before it would enter into force. Thus, sufficient safeguards existed under a formula employing a simple majority at the initial stage, which was, in any event, in conformity with the Covenant.

273. After some discussion, the Working Group agreed to adopt paragraph 1 of article 87 on the basis of the Japanese proposal by replacing the words "two thirds of the States" by the words "by a majority of States". The Chairman read it as follows:

1. After five years from the entry into force of the present Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting shall be submitted to the General Assembly for approval.

274. Turning to paragraph 2 of article 87, the Working Group decided to replace it by paragraphs 2 and 3 of article 51 of the International Covenant on Civil and Political Rights.

275. The Working Group adopted article 87 as a whole.

276. The text of article 87 as adopted on second reading by the Working Group reads as follows:

Article 87

1. After five years from the entry into force of the present Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment which they have accepted.

Article 88 (former article 89 of the first reading)

277. The Working Group took up consideration of article 88 at its 8th and 9th meetings, on 2 and 3 June 1989, on the basis of article 89 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

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

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

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



278. The Working Group also had before it amendments contained in document A/C.3/44/WG.I/CRP.3 submitted by Japan proposing the deletion of paragraph 2 of article 89 of the first reading and the rewording of paragraphs 1 and 2 of article 88, as follows:

"1. Any State Party ratifying, accepting, approving or acceding to the present Convention may, by a declaration appended to its ratification, acceptance, approval or accession, exclude from application of the present Convention, parts or articles and/or one or more particular categories of migrant workers.

"2. Any State Party which has made such a declaration in accordance with paragraph 1 of this article may at any time withdraw that declaration by a communication to that effect addressed to the Secretary-General of the United Nations."

279. The representative of Finland questioned whether it was appropriate to include a provision whereby States ratifying the Convention could exclude certain categories of migrant workers. He would also prefer to replace article 88 by article 28 of the Convention on the Elimination of All Forms of Discrimination against Women or to delete it. He suggested that a provision could be added prohibiting the exclusion of part VII of the Convention.

280. The representative of the Federal Republic of Germany said that he favoured the broad formula of the text as it had emerged from the first reading, which would make it easier for his Government to adopt the Convention since it had the possibility of excluding certain categories of migrant workers such as independent workers, seamen and project-tied workers.

281. The representative of India, supported by the representative of Algeria, took the view that article 88 should be deleted because there should not be, in principle, any provision allowing the possibility of excluding categories of workers. They felt that the objective of the Convention was to protect all migrant workers and therefore it was inappropriate to include any such restrictive clause. Thus they suggested that article 88 should be deleted.

282. The representatives of Australia, China, France, the Netherlands, Sweden, the Soviet Union, the United States and Yugoslavia expressed the view that article 88 should be deleted and replaced by an article on the basis of article 28 on reservations of the Convention on the Elimination of All Forms of Discrimination against Women. They stated that the principle espoused in article 88 was inappropriate in a human rights treaty as it might be perceived as providing for discrimination. They suggested instead that the norms of international law as they applied to reservations should be relied upon and that the provisions of the Vienna Convention on International Law relating to reservations could apply in that case. The delegation of the United States stated that it could pin down what appeared to be an emerging consensus favouring either the deletion of article 88 or its replacement by a formulation based on article 28 of the Convention on the Elimination of All Forms of Discrimination against Women.

283. The representative of Morocco agreed that article 88 should be replaced by article 28 of the Convention on the Elimination of All Forms of Discrimination against Women but it should be reformulated so that paragraph 2 would become the first paragraph, paragraph 1 should become paragraph 2 and paragraph 3 could stay as the third. She emphasized that it was essential that States parties should not make any reservations contrary to the spirit of the Convention.

284. While supporting the delegation of Morocco, regarding replacing article 88, the delegation of India expressed concern that a general clause on reservations would encourage States Parties to exclude particular categories of migrant workers, such as project-tied workers, from the rights guaranteed to them under the Convention. That view was supported by the delegation of Yugoslavia.

285. The representative of Norway said that some possibility of reservations should exist since States Parties might find themselves in exceptional circumstances under which they might not be able to apply strictly the provisions of the Convention.

286. With regard to the suggestion to use the equivalent provision in the Convention on the Elimination of All Forms of Discrimination against Women, the representative of Italy suggested that paragraph 2 thereof should be amended by the insertion of the words "in all its parts" after the word "Convention" in order to ensure that the application of entire parts of the Convention would not be excluded.

287. In order to reach a consensus the Working Group decided to postpone consideration of article 88 and to take it up at its next session.

Article 89 (article 89 bis which had emerged from informal consultations)

288. At its 12th meeting, on 7 June 1989, the Working Group took up consideration of a new article, which had emerged as a consensus from informal consultations. The text was based on article 29 of the Convention on the Elimination of All Forms of Discrimination against Women, as follows:

"1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

"3. Any State Party which has made a declaration in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

289. The representative of Sweden proposed that the word "reservation" should be changed to "declaration".

290. The representative of the Federal Republic of Germany said that, although he could not go along with the consensus, he would not obstruct the adoption of the proposed article. Furthermore, he pointed out that the present Convention went beyond the general human rights framework, thereby making it difficult for the International Court of Justice to take decisions on its implementation

291. The Chairman read out the following text which was adopted by the Working Group as article 89:

#### Article 89

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a declaration.

3. Any State Party which has made a declaration in accordance with paragraph 2 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

292. The representative of Finland proposed that the report should reflect some of the ideas for article 89 that had been discussed during informal consultations and that had not been agreed upon. One such proposal read as follows:

"1. A reservation incompatible with the objective and purpose of the present Convention shall not be permitted. *Inter alia*, any reservation intended to exclude the applicability of the provisions of the present Convention to any of the categories of migrant workers as defined in Articles 2 and 5 and to members of their families as defined in Article 4 shall be considered as incompatible with the object and purpose of the present Convention, nor shall a reservation the effect of which would inhibit the operation of the Committee established under Article 70 of this Convention be permitted.

"2. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession, as well as the text of any objection or observation any State Party may have made with respect to such reservations.

"3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received."

293. The representative of Finland pointed out that during informal consultations two trends had emerged on that matter. Some delegations had thought that that text was a good proposal, while in the opinion of other delegations it would have been preferable for the Working Group to adopt the text of article 28 of the Convention on the Elimination of All Forms of Discrimination against Women.

#### Article 90

294. At its 8th meeting, on 2 June 1989, the Working Group considered a text for article 90 on the basis of article 90 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"The Secretary-General of the United Nations shall notify all States which have signed, ratified, accepted, approved the present Convention or acceded thereto of the following:

"(a) Any signature;

"(b) The deposit of any instrument of ratification, acceptance, approval or accession;

"(c) Any date of entry into force of the present Convention in accordance with article 83;

"(d) Any other act, notification or communication relating to the present Convention."

295. The Working Group also had before it an amendment contained in document A/C.3/44/WG.I/CRP.3, whereby Japan proposed to delete paragraph 2 of article 90 and to reword paragraphs 1 and 2 as follows:

"1. Any State Party ratifying, accepting, approving or acceding to the present Convention may, by a declaration appended to its ratification, acceptance, approval or accession, exclude from application of the present Convention, parts or articles and/or one or more particular categories of migrant workers."

"2. Any State Party which has made such a declaration in accordance with paragraph 1 of this article may at any time withdraw that declaration by a communication to that effect addressed to the Secretary-General of the United Nations."

296. The representatives of Australia suggested that the article would be simplified if the following proposal were adopted:

"The Secretary-General of the United Nations is designated as the depository of the present Convention."

297. At the same meeting, the Working Group adopted on second reading a text for article 90.

298. The Working Group recorded its understanding that the functions of the Secretary-General as depository were to be interpreted in accordance with the relevant provisions of the Vienna Convention on the Law of Treaties.

299. The text of article 90 as adopted by the Working Group on second reading reads as follows:

#### Article 90

The Secretary-General of the United Nations is designated as the depository of the present Convention.

#### Article 91

300. At the same meeting, the Working Group took up article 91 on the basis of article 91 of the first reading contained in document A/C.3/39/WG.I/WP.1, reading as follows:

"1. The original of the present Convention, of which Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

"2. The Secretary-General shall transmit certified copies of the present Convention to all the States referred to in article 82."

301. The Working Group had also before it an amendment submitted by Japan contained in document A/C.3/44/WG.I/CRP.3 in which it was proposed to reword paragraphs 1 and 2 of article 91 as follows:

"1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary General of the United Nations.

"2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all the States referred to in article 82."

302. The Working Group adopted on second reading a text for article 91 reading as follows:

Article 91

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

II. DISCUSSION RELATING TO THE WORKING GROUP'S METHOD OF WORK ON THE FINALIZATION OF THE DRAFT CONVENTION

303. At its 1st meeting, on 30 May 1989, the Working Group proceeded with an exchange of views on its method of work relating to the finalization of the Convention.

304. Regarding the way in which the Working Group should proceed with the remaining articles and those left pending in the course of the second reading, the Working Group agreed to proceed with the consideration of the remaining articles in document A/C.3/39/WG.I/WP.1 and to come back to the pending ones afterwards.

305. Turning to the question of the finalization of the Convention, the Working Group agreed to have a technical review of the text of the draft prior to its submission to the General Assembly for adoption. The technical review would be entrusted to the Centre for Human Rights so that it could examine the uniformity of the terminology used in the text and gender-based language, and ensure harmonization of the various language versions of the draft Convention. It was further agreed that the Centre would proceed, bearing in mind General Assembly resolution 41/120, without entering into questions of substance; the Centre would confine itself to the technical aspects of the draft. The Working Group thus entrusted it, Chairman with requesting the Under-Secretary-General for Human Rights to undertake the said technical review through the Centre for Human Rights and to submit to the Working Group, before the forty-fourth session of the Assembly, the results of that review concerning the draft provisions of the Convention which had already been adopted on second reading. It was further understood that all final decisions regarding the text could be made only by the Working Group. Accordingly, in assisting with the technical review, the Centre could do no more than draw the Working Group's attention to any inconsistencies it uncovered.

306. At the 12th meeting, on 7 June 1989, the Working Group discussed again its future programme of work.

307. In that regard the representative of the United States read out the following statement:

"My delegation is pleased that the Working Group has made substantial progress this session towards completing the draft Convention. We are concerned, however, by the apparent rush to transmit the draft Convention to the General Assembly in 1989. While it would be desirable for the Working

Group to finish its work as soon as possible, we recognize that a number of significant unresolved issues remain, particularly with respect to part V of the Convention (concerning specific categories of migrant workers).

"My delegation believes that it is incumbent upon the Working Group to resolve all of these issues, with the possible exception of the funding question, which may be more properly left to the General Assembly. The General Assembly established this Working Group precisely to reach consensus on an unbracketed draft Convention. Accordingly, it would be a dereliction of duty for the Working Group to transmit to the General Assembly an incomplete text or one with numerous brackets.

"In addition, the United States believes that, in any event, the Working Group must reconvene to consider the results of the technical review that is to be performed on the draft Convention. That technical review could begin after this session, but could not be completed until the Working Group has resolved all substantive issues in the Convention. For this reason at least, it is obvious to my delegation that the Working Group will have to meet again to finish its work, in 1990 if necessary, and that it would be unwise and unnecessary for the Working Group to transmit an unfinished text to the General Assembly in 1989."

308. The representative of Norway associated himself with the statement made by the delegation of the United States. He wished to underline that it must be the Working Group itself which at any time could decide whether to continue its drafting and deliberation or to send the draft text to the General Assembly. If no consensus could be reached regarding all the articles in the draft, the draft might contain either texts in brackets or the Working Group might decide to eliminate such articles from the draft text to be sent to the General Assembly. However, it had to be the Working Group itself which made such a decision.

309. The representative of the Netherlands emphasized that it was important for the Working Group to send a text to the General Assembly which did not contain any square brackets. He therefore wished to associate his delegation with the statement made by the representative of the United States. The representatives of Finland, France, Italy, Japan and Sweden also wished to associate their delegations with the statement made by the representative of the United States.

310. The representative of Finland wished to underline the views expressed by the representative of the Netherlands with respect to the necessity of arriving at a text without any brackets. He understood that to be the common objective of the Group, and expressed his optimism that the objective also would be fulfilled if all delegations continued to adhere to the spirit of compromise as had been the case in the past.

311. The delegation of Morocco considered that the statement by the United States was very useful, especially since in the Third Committee the United States delegation had always voted against the resolution on the draft Convention that the Working Group was in the process of drafting. It would support the inclusion of the statement in the report.

312. The delegation of India, while generally supporting the statement made by the delegation of Morocco, indicated that it would be in a position to support the statement made by the representative of the United States if it could be slightly amended and made more balanced.

313. The representative of Yugoslavia supported the statement made by the delegation of India, as well as the view expressed by the representative of the Netherlands that there was a need to strive to reach consensus and send the text of the draft Convention to the Assembly, if possible, without brackets.

314. The representative of Algeria said that if, as some speakers had suggested, the Working Group should seek to produce a text without brackets, that concern could not reasonably be established as a requirement. Accordingly, she could not support such a step, which might imply that the submission of the draft Convention to the General Assembly would be postponed indefinitely. Hence, her delegation could not associate itself with a statement that might imply that the Working Group could transmit to the Assembly only a text without brackets. In effect, the Group might be unable to find a solution for some articles left pending and in that case the final decision should be taken by the Assembly, which, in exercise of its supreme authority, would resolve the issues involved.

315. With reference to the statement by the representative of the United States, the Chairman indicated that there had not been any formal proposal in the Working Group to end its second reading at a fixed date. It was clear that the Group should do its utmost to submit to the General Assembly a text in which all discrepancies had been resolved. Still, it was obvious to him that the Assembly would not expect the Group to delay indefinitely the submission of the draft Convention on the ground that one or a few problems could not be solved within the Group. If, unfortunately, one or two questions keep encountering disagreement in the Group it would be incumbent on the Assembly to take a decision on them. At any rate, it was the Assembly that would decide on how long it would extend the mandate of the Group.

316. At the 12th meeting, on 7 June 1989, the Working Group took up discussion of a request of the delegation of Japan to submit formally a paper to the Working Group containing proposals relating to parts I to VII of the draft Convention.

317. While showing sympathy with the delegation of Japan, which admitted that it had not been able to participate fully in past sessions of the Working Group, a large number of delegations felt that it would be inappropriate to have at the present stage, in an official document of the Group, proposals concerning provisions of the Convention which had already been formally adopted during the second reading, since the Group would not be in a position to consider such proposals. Other delegations considered that no difficulties would be caused if a document were circulated officially that made it clear that the delegation of Japan was seeking only to comment on articles already adopted for the information of the Working Group. Under those circumstances the Chairman said that the delegation of Japan was free to make its position known by circulating its comments unofficially, and that the Japanese proposals relating to pending provisions would be circulated officially in document A/C.3/44/WG.I/CRP.5.



318. On the proposal by the representative of Finland, supported by a number of other delegations, the Japanese delegation would also be given an opportunity to make a general statement at the beginning of the next session explaining its views on the draft Convention.

319. The delegation of Japan wanted the comments of the Japanese Government with respect to the articles of the draft Convention that had already been adopted to be made known to delegations and circulated at the present in an informal document.

320. The Working Group placed on record its understanding that the delegation of Japan would not reopen the discussion on articles already adopted on second reading.

321. At its 14th meeting, on 8 June 1989, the Working Group adopted the present report.

III. TEXT OF THE ARTICLES OF THE DRAFT INTERNATIONAL CONVENTION  
ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND  
THEIR FAMILIES ADOPTED ON SECOND READING BY THE WORKING  
GROUP DURING THE SPRING OF 1989

...

Article 70, paragraph 2

2. As regards compensation matters relating to the death of a migrant worker or a member of his family, State Parties shall, as appropriate, provide assistance to the persons concerned with a view to the prompt settlement of such matters. Settlement of these matters shall be carried out on the basis of applicable national law in accordance with the provisions of the present Convention and any relevant bilateral or multilateral agreements.

...

PART VII

Application of the Convention

Article 73

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

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States

Parties concerned and information relevant to the consideration of these reports in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

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

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

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

6. The Committee may invite representatives of other specialized agencies and other organs of the United Nations, as well as of international organizations, to be present and heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

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

#### Article 74

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The Committee shall normally meet annually.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

...

PART VIII

General provisions

Article 76

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 77

Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.

Article 78

1. No provision in the present Convention shall affect more favourable rights or freedoms granted to migrant workers and members of their families by virtue of:

- (a) The law or practice of a State Party; or
- (b) Any international treaty in force for the State Party concerned.

2. Nothing in the present Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act that would impair any of the rights and freedoms as set forth in the present Convention.

Article 79

The rights of migrant workers and members of their families provided for in the present Convention may not be renounced. It shall not be permissible to exert any form of pressure upon migrant workers and members of their families with a view to their relinquishing or foregoing any of the said rights. It shall not be possible to derogate by contract from rights recognized in the present Convention. States Parties shall take appropriate measures to ensure that the principles are respected.

Article 80

Each State Party to the present Convention undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person seeking such a remedy shall have his claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### Article 81

Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention.

### PART IX

#### Final provisions

#### Article 82

1. The present Convention shall be open for signature by all States. It is subject to ratification.

2. The present Convention shall be open to accession by any State.

3. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

#### Article 83

1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession.

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#### Article 86

1. Any State Party may denounce the present Convention, not earlier than five years after the Convention has entered into force for the State concerned, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of the receipt of the notification by the Secretary-General.

#### Article 87

1. After five years from the entry into force of the present Convention a request for the revision of the Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting shall be submitted to the General Assembly for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment which they have accepted.

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#### Article 89

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a declaration.

3. Any State Party which has made a declaration in accordance with paragraph 2 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

#### Article 90

The Secretary-General of the United Nations is designated as the depository of the present Convention.

Article 91

1. The present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

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