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AD HOC COMMITTEE ON STATELESSNESS AND RELATED PROBLEMS

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Comments submitted by the Director-General of the  
International Labour Office on the draft Convention  
Relating to the Status of Refugees (E/1618)

1. The draft Convention Relating to the Status of Refugees prepared by the ad hoc Committee on Statelessness and Related Problems during its session in January and February 1950, is of particular interest to the International Labour Organization, since certain of the problems with which it deals have been the subject of rules and principles incorporated in the Migration for Employment Convention and Recommendation.

At its 111th session (Geneva, February-March 1950), the Governing Body of the International Labour Office examined the above-mentioned draft Convention and pointed out that some of its provisions duplicated, or were in conflict with, the provisions of existing international labour conventions, particularly the Migration for Employment Convention, 1949. Consequently, the Governing Body authorized the Director-General to approach the Secretary-General of the United Nations with a view to eliminating such duplication and contradictions.

2. The comments that follow are submitted in accordance with that decision and are based on the desire that the final text of the draft Convention shall, as far as possible, be in harmony with existing international labour conventions.

3. First of all, it must be pointed out that under the Migration for Employment Convention and Recommendation adopted at the 32nd session of the International Labour Conference (Geneva, June-July, 1949), refugees were accorded the benefit not only of the guarantees provided for other migrant workers, but also of special protection since, by reason of their refugee status, it is impossible for them to return to their country of origin.

With regard to the provisions relating to this special protection, Articles 27 and 28 of the draft Convention Relating to the Status of Refugees contain regulations similarly inspired.

On the other hand, with regard to certain aspects of the labour and living conditions of refugees in the country of residence, the draft Convention provides solutions which differ from those incorporated in the Migration for Employment Convention. Moreover, the wording of the draft does not, in certain cases, appear to correspond exactly with the intentions and decisions of the ad hoc Committee.

4. Article 19, paragraph 1 of the draft Convention reproduces most of the rules contained in Article 6, paragraph 1 of the Migration for Employment Convention. It should be noted, however, that under the latter convention, the principle of equal treatment extends to membership of trade unions (paragraph 1 (a) (ii) ) and to accommodation (paragraph 1 (a) (iii) ), whereas Article 19 of the draft Convention under consideration makes no mention of these two points. In the field of trade union freedom, Article 10 provides that refugees shall be accorded the most favourable treatment accorded to nationals of foreign countries; the question of housing is dealt with in Article 16, under which refugees are accorded treatment not less favourable than that accorded generally to aliens in the same circumstances.

In drawing attention to such differences, emphasis must be placed on the desirability of bringing Article 19 of the draft Convention into harmony with the relevant provisions of the Migration for Employment Convention. The application of the principle of equal treatment as compared with nationals, in respect of membership of trade unions and housing, within the framework of

Article 19 of the draft Convention would also have the advantage of providing a more uniform definition of the obligations assumed by governments in these fields. According to Article 19, such obligations are limited "in so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities," and according to Article 16, "in so far as the matter is regulated by laws or regulations, or is subject to the control of public authorities." Article 10 makes no mention of any such limitation, although it was borne in mind by the ad hoc Committee.

5. In the comments annexed to the draft Convention (document E/1618, page 52) it is stated that "It was also agreed that in cases of fatal employment injuries the beneficiaries of the injured person should receive benefits even if they are not resident in the country where the injury occurred." In this connection it must be pointed out that the present draft of Article 19 makes no such provision. Consequently, if the ad hoc Committee considered that the beneficiaries should receive the benefits in question even in the case contemplated, an express provision to that effect should be included in the body of the article itself.

6. Finally, it is pointed out that in the English text of Article 19 the word "invalidity" which was used in the Migration for Employment Convention, has been replaced by the word "disability." The definition of the term "invalidity" given in the Income Security Recommendation, 1944 (paragraph 11)<sup>1</sup> shows that these two terms have a different connotation and that it is not merely a matter of linguistic preference as stated in the ad hoc Committee's comments: the term "invalidity" means permanent disability, while "disability" also covers temporary disability. Moreover, the term "invalidity" is used not only in the Migration for Employment Convention, but also in Conventions Nos. 37 and 38 on Invalidity Insurance, and in Convention No. 48 concerning the Establishment of an International Scheme for the Maintenance of Rights under Invalidity, Old Age and Widows' and Orphans' Insurance. Consequently, it would be desirable for the ad hoc Committee to consider, in the light of the foregoing comments, the advisability of inserting the word "invalidity" in the English text in place of the word "disability".

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<sup>1</sup> "The contingency for which invalidity benefit should be paid is inability to engage in any substantially gainful work by reason of a chronic condition, due to disease or injury, or by reason of the loss of a member or function."