

A/C.3/39/WG.2/CRP.1/Add.6  
13 November 1984

ORIGINAL: ENGLISH

NOV 19 1984

Thirty-ninth session  
THIRD COMMITTEE  
Working Group 2  
Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Draft report of the open-ended Working Group on the elaboration  
of the draft declaration on the human rights of individuals who  
are not citizens of the country in which they live

Chairman/Rapporteur: Mrs. Halima Embarek WARZAZI (Morocco)

Addendum

1. At its 5th, 6th and meetings held on 29 October, 5 and November 1984, the Working Group discussed article 9 on the basis of the text provisionally adopted at first reading and which read as follows:

"Article 9

"1. No alien shall be arbitrarily deprived of his lawfully acquired assets.

"2. Any alien whose assets are expropriated in whole or in part in accordance with national laws in force shall have the right to [prompt, adequate, effective and] [prompt, adequate and effective] [just] compensation [subject to national laws and regulations in force] [in accordance with international law] [in accordance with the recognized principles of international law]."

Paragraph 1

2. At its 5th meeting, the Working Group adopted the first paragraph as it had been formulated at first reading, without any changes.

Paragraph 2

3. Within the framework of a general debate on paragraph 2, it was pointed out by some delegations that the text that would eventually be adopted regarding expropriation and compensation, given the importance of the issue, would have repercussions in other areas of international law. The opinion was expressed by other delegations that, despite the importance of the issue, it should be kept in mind that article 9 dealt with the protection of aliens as individuals. During the debate of specific issues the working Group discussed, under paragraph 2 of article 9, what kind of compensation aliens should be entitled to and whether such compensation should be subject to national or international law. A debate was also held in that connection as to whether, with regard to compensation and indemnification, aliens should be made equal with citizens or whether more favourable treatment could be accorded to aliens in certain cases.

4. The following positions were taken at the beginning of the debate at the 5th meeting:

(a) The representative of the USSR expressed the opinion that paragraph 2 should be deleted since, as he explained, an alien whose assets had been expropriated had the right to compensation only to the extent provided for by the national law in force. Furthermore, the paragraph might give the impression that a special régime of privileges was established for foreigners;

(b) Regarding the adjectives qualifying the word "compensation", the representative of France expressed his delegation's preference for the expression "prompt payment of an adequate and effective compensation" and the deletion of the word "just", which in his view was subjective;

(c) Concerning the reference to national or international law at the end of paragraph 2, the delegations of the United Kingdom, Italy and the United States preferred the deletion of the expression "subject to national laws and regulations in force" and the retention of the expression "in accordance with international law";

(d) The representative of Mexico stated that his delegation could not accept the reference to international law, since expropriation and compensation were in fact subject to national law, as was mentioned in many United Nations documents.

5. In light of the positions taken at the beginning of the debate on paragraph 2, the Chairman, at the 6th meeting held on 5 November 1984, submitted a compromise proposal which read as follows:

"2. Any alien whose assets are expropriated in whole or in part in accordance with national laws in force has the right to prompt payment of a just compensation".

The Chairman informed the working Group that the delegations of Ecuador, France, Italy, Mexico and Sweden had, in a spirit of compromise, expressed their intention to go along with her proposal. She also recalled the relevant provisions of General Assembly resolution 1803 (XVII) on permanent sovereignty over natural resources, and General Assembly resolution 3281 (XXIX) containing the Charter of Economic Rights and Duties of States.

/...

6. In connection with the Chairman's compromise proposal, the representatives of the United Kingdom, France and Australia expressed their preference for the deletion of the expression "in accordance with national laws in force", for the reason that there might be no such laws in a given country. The representative of Australia added that paragraph 1 of article 9, which had been adopted already, made it clear that the article regulated lawful compensation and thus the expression "in accordance with national laws in force" would be superfluous in paragraph 2. That interpretation was shared by the representative of Greece. The representative of the United Kingdom proposed adding the expression "and for a public purpose" after "national laws in force", if the latter expression were to be retained; her proposal was aimed at excluding expropriation for private, arbitrary purposes. Support was expressed in the Working Group for adding the words "and for a public purpose".

7. As to the kind of compensation to be made for expropriation, some representatives stated that they could not accept the term "just compensation". The representatives of the United States, the United Kingdom, France, the Federal Republic of Germany, Sweden and Canada expressed strong preference for using the adjectives "prompt, adequate and effective". Those delegations also declared that, although they preferred a reference to international law, they could accept its omission if the adjectives "prompt, adequate and effective" were to be adopted. The representative of the Federal Republic of Germany drew attention to the fact that many bilateral agreements existed which provided for prompt, adequate and effective compensation in case of expropriation and the omission of a similar expression in the draft declaration would undermine those agreements. The representative of France reiterated his proposal for the expression "prompt payment of adequate and effective compensation".

8. At the 6th meeting, the representative of the United Kingdom submitted the following proposal for paragraph 2:

"2. Any alien whose assets are expropriated in whole or in part shall have the right to the prompt payment of adequate and effective compensation".

9. The representatives of the Byelorussian SSR and Tunisia expressed their strong preference for retaining the expression "in accordance with national laws in force".

10. The representatives of Tunisia and Mexico stated that the term "effective compensation" could pose problems in many national legislations since it could be taken to mean immediate payment without the possibility of recourse. The representative of France stated that, according to his interpretation, the expression "effective compensation" did not refer to the time by which the payment should take place and thus did not mean immediate compensation without the possibility of recourse. The representative of Uganda suggested the word "equitable" instead of "effective". In that connection the representative of Greece stated that the word "equitable" would be like "adequate" and was likely to create complications in the adoption of the paragraph.

11. Regarding the term "prompt", the representative of the Byelorussian SSR said that the expression "prompt compensation" in Russian implied very quick compensation, whereas the relevant regulations in many national legal systems were complicated.

/...

The representative of Mexico stated that the word "prompt" which in English meant "in due course" should not be translated "prompto" in Spanish, because in the latter language it meant "accelerated". In his view, the expression "prompt, adequate and effective compensation" indicated a reference to international law. He also added that the purpose of paragraph 2 was to avoid discrimination against aliens and not to treat aliens more favourably than citizens. The representatives of Greece and Italy stated they did not interpret the word "prompt" as meaning "immediate", but as indicating that compensation should be paid within a reasonable time. The representative of Mexico, at the 6th meeting, submitted the following proposal for paragraph 2:

"2. Any alien whose assets are expropriated in whole or in part in accordance with national laws in force shall have the right to just and prompt payment of compensation with treatment equal to that received by citizens of the State in which the alien lives."

12. Referring to the Chairman's proposal, the representative of India stated that his delegation had difficulty with the omission of the reference to national law at the end of paragraph 2 (see para. 5 above). He explained that in his country even citizens did not, at this point, have a right to prompt, adequate and effective compensation.

13. The representative of Greece stated that the Chairman's proposed expression "prompt payment of a just compensation" was a good compromise solution. The word "just" had a clear meaning in international law. He expressed his disagreement with the idea presented by the Mexican delegation that the purpose of paragraph 2 was to make aliens equal with citizens, because in certain States citizens were in fact not compensated; the task of the Working Group was to elaborate international law and it could therefore not go below certain standards. The latter position of the Greek representative was shared by the delegations of Italy and the Federal Republic of Germany.

14. The representative of Italy suggested that the Working Group might wish to consider not mentioning either national or international law at the end of paragraph 2 and adding instead a phrase from paragraph 4 of General Assembly resolution 1803 (XVII).

15. In light of the discussion, the Chairman submitted, at the 6th meeting, the following compromise proposal for paragraph 2, taking into account resolution 1803 (XVII):

"2. Any alien whose assets are expropriated in whole or in part in accordance with national laws in force and for a public purpose shall have the right to prompt payment of a just compensation. In such cases the alien shall be paid in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law."

16. With regard to the second compromise proposal of the Chairman, the representatives of the USSR and the Byelorussian SSR pointed out that there was a

contradiction between stating, on the one hand, that expropriation was in accordance with national law and specifying, on the other hand, that compensation should be prompt, just, etc. Further discussion of the second compromise proposal of the Chairman was postponed to a later meeting.

17. The representative of Cape Verde stated, at the 6th meeting, that article 9 of the draft declaration had to take into account other discussions within the system of the United Nations, and in particular those on the Code of Conduct on Transnational Corporations. He suggested that the word "nationalized" had to be added after the word "expropriated" in paragraph 2, in order to protect aliens subjected to either one of those measures. In that connection, some delegations expressed their preference for the Working Group not to expand its discussions about nationalization, since the draft declaration concerned aliens as individuals and not foreign juridical persons. The representative of Cape Verde did not insist on his suggestion, but reserved his right to raise this issue at the Third Committee.

-----