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THIRD COMMITTEE
Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

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

Chairman: Mr. Antonio GONZALEZ DE LEON (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

Addendum

Article 13

1. The text of article 13, as it emerged from first reading (A/C.3/39/WG.1/WP.1), read as follows:

"Article 13

(1) Migrant workers and members of their families shall have the right to hold opinions without interference.

(2) Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas [of all kinds], regardless of frontiers, either orally, in writing or in print, in the form of a text, or through any other media of their choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public) or of public health or morals."

2. At the 7th meeting, on 29 September, the Chairman said that as a result of informal consultations it had been suggested that the brackets be deleted from around the expression "of all kinds" in paragraph (2).

3. The representative of the USSR stated that his delegation would have difficulties with the retention of the expression "of all kinds". He referred to article 20 of the International Covenant on Civil and Political Rights, according to which propaganda for war and any advocacy of national, racial or religious hatred inciting discrimination, hostility or violence shall be prohibited by law.

4. The representative of the Federal Republic of Germany, referring to the reservations of his country with regard to article 19 of the International Covenant on Civil and Political Rights, stated that article 13 of the draft Convention could not be applicable to migrant workers and their families.

5. The representative of the United States expressed his preference for the retention of the expression "of all kinds" in paragraph (2). In his view, paragraph (3) of article 13 balanced the text of paragraph (2). He also pointed out that restrictions similar to those of article 20 of the International Covenant on Civil and Political Rights would be unconstitutional in his country.

6. The representative of France expressed his support for the retention of the expression "of all kinds" in paragraph (2).

7. The representative of Sweden suggested that a subparagraph (c) could be added to paragraph (3) stating the following: "(c) For the fulfilment of obligations undertaken in international agreements in force for the State Party concerned". The representative of Italy said that such a text could imply that the rights mentioned in paragraph (2) could be denied through bilateral agreements. He therefore suggested the possibility of including an article identical to article 20 of the International Covenant on Civil and Political Rights, although, in his view, such an inclusion was not necessary.

8. The representative of Nigeria, supported by the representatives of Algeria and Kenya, favoured the deletion of the expression "of all kinds" in paragraph (2). The representative of Nigeria said that since paragraph (3) contained limitations to the rights mentioned in paragraph (2), it would be illogical to retain the expression "of all kinds" in the latter paragraph.

9. Referring to paragraph (3), the representative of Cape Verde underlined the significance of the expression "as are provided by law" and suggested that subparagraphs (c) and (d) could be added along the lines of article 20 of the International Covenant on Civil and Political Rights. In that case the expression "of all kinds" in paragraph (2) could be mentioned.

10. At the 8th meeting, on 29 September, the Working Group continued consideration of article 13. The Chairman announced that, as a result of informal consultations, the following suggestions were before the Working Group: paragraph (1) would remain unaltered; in paragraph (2) the brackets would be deleted from around the words "of all kinds"; and in paragraph (3), a subparagraph (c) would be added reading as follows: "(c) for the purpose of preventing war propaganda or advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence."

11. The representative of the United States suggested the use of the word "or" between the words "racial" and "religious hatred" in subparagraph (c) of paragraph (3).

12. Some delegations repeated their scepticism as to the retention of the expression "of all kinds". The representative of Nigeria stated that her delegation, in a spirit of co-operation, could go along with the text as it had been read out by the Chairman if that text gained the consensus of the whole Working Group.

13. The representative of Italy said that even if the expression "of all kinds" were deleted, the sense of the paragraph would remain the same. However, two subparagraphs (c) and (d) could be added to paragraph (3) following the text of article 20 of the International Covenant on Civil and Political Rights. The representative of Cape Verde stated that that expression should be retained, since it was used in article 19 of the Covenant, and it did not seem to be the intention of the Working Group to change the basic philosophy of that article.

14. At its 10th meeting, on 30 September, the Chairman read to the Working Group all the accepted amendments to the text of article 13 following informal consultations. Those amendments consisted in deleting the brackets around the words "[of all kinds]", and in adding the words "of the States concerned" after the words "national security" in subparagraph (b) and in adding new subparagraphs (c) and (d) based on article 20 of the International Covenant on Civil and Political Rights as follows:

"(b) For the protection of national security of the States concerned or of public order (ordre public) or of public health or morals;

"(c) For the purpose of preventing any propaganda for war;

"(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."

15. The Working Group thus adopted article 13 as follows:

Article 13

(1) Migrant workers and members of their families shall have the right to hold opinions without interference.

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(2) Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security of the States concerned or of public order (ordre public) or of public health or morals;

(c) For the purpose of preventing any propaganda for war;

(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

16. The representative of Yugoslavia placed on record that subparagraphs (a), (b), (c) and (d) of article 13 did not cover all the concerns of his delegation in where the words "all kinds" were included. His delegation felt that activities and ideas which led to terrorism, as well as subversive activities against any country or any advocacy aimed at overthrowing a constitutional system or a legal Government, should relate to the question of national security. He stated that although his delegation was not completely satisfied with the wording of the article, he accepted the present wording to avoid hindering the consensus.

17. The representative of Algeria stated that her delegation did not object to maintaining the phrase "of all kinds" as the interpretation given to that phrase by her delegation did not purport any risk which would affect national security of the State or of public order (ordre public).

18. The representative of India stated that he would have preferred an explicit reference to "prevention of any acts which might constitute incitement to discrimination, hostility or violence". However, as this was implicitly included in subparagraphs (b) and (d) of paragraph (13), according to the understanding of the Working Group he would go along with the consensus.

Article 14

19. At the 8th meeting, on 29 September, the Working Group adopted article 14, on second reading, without any changes from the text which had emerged at the first reading (A/C.3/39/WG.1/WP.1), as follows:

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Migrant workers and members of their families shall not be subjected to arbitrary or unlawful interference with their privacy, family, home, correspondence or other communications nor to unlawful attacks on their honour and reputation. They shall have the right to the protection of the law against such interference or attacks.

Article 15

20. At the 8th meeting, on 29 September, the Working Group considered article 15 on the basis of the following text which had emerged at the first reading (A/C.3/39/WG.1/WP.1):

Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment (receiving country), their assets are expropriated in whole or in part, they shall have the right to just compensation.

21. The Chairman said that the words "[receiving country]" could now be deleted since the Working Group had already adopted the definitions. The representative of India suggested the inclusion of the words "and adequate" before "compensation".

22. A discussion took place on the clarification of the word "arbitrarily" in the first sentence of article 15. The representative of the United States pointed out that, in article 14, the words "arbitrary or unlawful" had been used and that the same words could also be used in article 15. Some delegations agreed with the Chairman's view that the term "arbitrarily" referred in this context to acts not performed in accordance with law.

23. The representative of Italy said that, in his view, the word "just" before "compensation" was not precise. He suggested instead the replacement of the word "just" by the words "adequate and effective".

24. After a brief debate the Working Group adopted article 15 at the same meeting as follows:

Migrant workers and members of their families shall not be arbitrarily deprived of property, whether owned individually or in association with others. Where, under the legislation in force in the State of employment, their assets are expropriated in whole or in part, they shall have the right to fair and adequate compensation.
