

A/C.3/39/WG.2/CRP.1/Add.1
17 October 1984

ORIGINAL: ENGLISH

IN LIBRARY

OCT 22 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

Article 4

1. At its 1st, 2nd, 3rd, 4th and ____ meetings held on 3, 4, 9, 10 and ____ October 1984, the Working Group resumed consideration of the pending parts of article 4, in particular paragraph (1) subparagraph (d), the chapeau of paragraph 2 and new paragraph 3.

Paragraph (1), subparagraph (d)

2. The Working Group discussed subparagraph (d) at its 1st, 2nd and ____ meetings. The Chairman recalled that there had been agreement in the Working Group at its previous session that the first part of subparagraph (d) would read as follows:

"(d) The right to choose a spouse, to marry, to found a family ..."

3. With regard to the second part of subparagraph (d) concerning reunification of families, the Working Group was seized with a number of proposals submitted at its 1983 sessions as well as new proposals. The following proposals, submitted at the Working Group's previous session were discussed:

(a) A proposal submitted by the Ukrainian Soviet Socialist Republic which read as follows:

"(d) The right to choose a spouse, to marry, to found a family; upon conditions provided for by national law an authorization may be granted to the alien to join the spouse and the unmarried minor children.";

(b) A proposal submitted by Venezuela, subsequently amended by the United Kingdom and France which read as follows:

"(d) The right to choose a spouse, to marry, to found a family and to be reunited with his or her spouse, unmarried minor children, upon conditions provided for by national legislation, and if permitted by domestic law, other family members.";

(c) A proposal presenting three possibilities for the second part of the subparagraph which read as follows:

"(d) ... Upon conditions provided for by domestic law the spouse and unmarried minor children [may be authorized] [shall be authorized] [will be authorized] to join the alien".;

(d) A new proposal of the Ukrainian SSR considered as a compromise which read as follows:

"(d) ... Upon conditions provided for by domestic law the spouse and unmarried minor children may be authorized to join the alien".

It was the understanding of the Working Group that it would first clarify subparagraph (d) with regard to reunification of the nuclear family and then discuss that provision with regard to the extended family.

4. The representative of France reiterated the opinion expressed by his delegation at the previous session that subparagraph (d) should apply only to aliens lawfully residing in a country.

5. Some delegations pointed out that, in their view, the key point in the part of subparagraph (d) concerning the reunification of families was the reference to internal law. The representative of Italy stated that, although it was the sovereign right of every State to adopt legislation regarding the reunification of families, the declaration should set certain limits to the State's discretionary power. In his view, the expression "may be authorized", in subparagraph (d) would deprive that provision of any substance. He therefore proposed the following formulation:

"... Upon conditions provided for by domestic law the spouse and unmarried minor children shall be authorized to join the alien."

6. The representative of Sweden drew attention to the chapeau of paragraph (1) of article 4 which read as follows:

"Aliens shall enjoy in accordance with domestic law in particular the following rights:"

In his view, reference to domestic law should not be repeated in subparagraph (d) because it would be pleonastic from a drafting point of view and because of the impression that the repetition of conditional statements might create in terms of public appeal of the declaration. The representative of Gabon shared the view that the reference to domestic law should not be repeated in subparagraph (d). In that connection, the representative of the Netherlands expressed the opinion that the reference to domestic law in the chapeau of article 1 indicated an obligation for States, while the similar reference in subparagraph (d) set a safeguard. The representative of the Union of Soviet Socialist Republics stated that the particular difficulty of the provision concerning reunification of families lay in the fact that the laws of two or more countries could be involved, since rights were given to aliens who lived in a different country.

7. At the 1st meeting, in an effort of compromise, the representative of India suggested the following reformulation of subparagraph (d):

"(d) The right to choose a spouse, to marry, to found a family and upon conditions provided for by domestic law to be reunited with his or her spouse and unmarried minor children."

This suggestion was supported by several delegations, in particular those of the United Kingdom, the Netherlands, Greece and Italy. The representative of the Byelorussian Soviet Socialist Republic suggested that the words "reunited with" be replaced by the words "joined by".

8. The representatives of Greece suggested that the word "upon" be replaced by the words "subject to". The representative of Italy expressed his preference for the word "upon" which, in his view, indicated an obligation of the State to legislate. The representative of the United States, supported by the representative of Australia, expressed the opinion that the expression "upon conditions provided for by domestic law" did not necessarily impose an obligation to legislate and that the right of reunification of families existed even if no conditions were stipulated by law. The representative of Australia, supported by the representative of India, suggested that the expression "upon conditions provided for" could be replaced by the expression "upon conditions which may be provided for". The representative of the United States agreed with the proposal of Italy as amended by the Byelorussian SSR and Greece.

9. The representative of Greece stated that her suggestion was not intended to restrict the right under discussion but rather to bring subparagraph (d) more in line with the rest of the declaration. In the light of the debate and in a spirit of compromise, she did not insist on her suggestion.

10. The representative of the USSR, at the 2nd meeting, stated that he still could not accept the formulation of the second part of subparagraph (d) contained in the different proposals, while he would support a formula similar to that used in the Final Act of Helsinki. He proposed the separation of the two parts of subparagraph (d). Subparagraph (d) would only contain the phrase "the right to choose a spouse, to marry, to found a family;", while the issue of reunification of families would be dealt with in a separate paragraph (3) of article 4. He subsequently submitted the following proposal for that new paragraph:

"(3) Applications of aliens to be reunited with his or her family are considered in a positive and humane manner in accordance with national legislation."

11. Commenting on the latter proposal, the representative of Italy stated that it seemed inconsistent with the general thrust of the declaration which was to give rights. The USSR proposal did not contain the idea of a right.

12. The representative of the Byelorussian SSR drew attention to the fact that the original text of the subparagraph drafted by the Special Rapporteur did not contain any reference to the reunification of families. He proposed that the Working Group revert to that text which could be understood to encompass the idea of reunification of families. The text of the Special Rapporteur read as follows:

"The right to marriage and choice of spouse".

13. In the light of the debate that followed, the Working Group, at its 2nd meeting, accepted the Chairman's proposal to put a semi-colon after the phrase "the right to choose a spouse, to marry, to found a family;" and keep within subparagraph (d) the part on reunification of families which would be eventually adopted. The representative of Uganda subsequently stated that he would have preferred to have subparagraph (d) remain undivided as a single entity. The representative of the USSR stated that he had originally insisted that the issue of reunification of families be treated in a completely separate paragraph of article 4 because he did not consider that the chapeau of paragraph (1) covered the substance of that issue.

14. After a lengthy debate the Chairman submitted, at the 2nd meeting, a compromise proposal for the second part of subparagraph (d) which, as modified by the representatives of Indonesia, the United States and Australia, read as follows:

"The right to be joined by his or her spouse and unmarried minor children upon conditions which may be provided by national legislation;"

Agreeing to that proposal, the representative of Italy subsequently stressed that, although the word "may" had been used, it was his understanding that the right of reunification existed whether or not conditions were set by national legislation.

15. The Working Group further debated the several proposals made, but, as no agreement could be reached, the Chairman proposed, at the 2nd meeting, that the following text of subparagraph (d) be transmitted to the Third Committee:

"(d) The right to choose a spouse, to marry, to found a family;"

"[The right to be joined by his or her spouse and unmarried minor children upon conditions which may be provided by national legislation;]"

"[Applications of aliens to be reunited with his or her family are considered in a positive and humane manner in accordance with national legislation;]"

16. Referring to the first part of subparagraph (d), the representative of Zimbabwe stated that he preferred that the phrase "in accordance with the provisions of national law" be added at the end of that part. His delegation would otherwise have difficulties adopting that provision at a later stage. However, he did not insist and requested that his position be clearly reflected in the report.
