

A/C.3/45/WG.1/CRP.2/Add.3
5 June 1990
ENGLISH
ORIGINAL: ENGLISH/FRENCH

Forty-fifth session
THIRD COMMITTEE
Item 12 of the preliminary list*

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. Claude HELLER (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

Addendum

Article 87

1. At its second meeting, held on 29 May 1990, the Working Group took up consideration of a text for article 87 based on texts for former article 86 contained in section IV of document A/C.3/45/WG.1/CRP.1 as follows:

IV. FORMER ARTICLE 86

Article 86

[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.]

Article 86

[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.]

* A/45/50.

and a proposal for former article 86 submitted by the representative of Finland as follows:

A State ratifying or acceding to the present Convention may not exclude the application of any part of it or without prejudice to article 3, exclude any particular category of migrant workers from its application.

2. In introducing the proposal, the representative of Finland stated that some members of the Working Group had sought to include a reciprocity clause in the substance of former article 86, in order to preclude the possibility of States ratifying the Convention solely to derive benefits from it and to ensure that all States parties bore their fair share of obligations. One of the principal concerns of many members of the Working Group was that some States might seek to ratify only specific parts of the Convention or seek to exclude certain categories of migrant workers from its ambit. The essential motivation behind the present proposal was to preclude that and, if accepted, it would render the adoption of a provision on reciprocity redundant.

3. The representative of the Federal Republic of Germany expressed a preference for the text for former article 86 as contained in the right hand column of document A/C.3/45/WG.1/CRP.1. He reiterated that the draft Convention went into too many details and, if his Government was considering whether to ratify the Convention, it would not wish to be bound to recognize all of the extensive rights covered therein in respect of the many categories of migrant workers it sought to cover. He was therefore unwilling to support the text of the proposal by Finland. The representative of Japan also expressed a preference for the text in the right hand column of document A/C.3/45/WG.1/CRP.1 and reserved the position of his delegation as regards the proposal by Finland.

4. The representative of the Netherlands expressed his support for the proposal by Finland on the grounds that he wanted to preclude the possibility of partial ratification of the Convention and preferred the approach taken in that proposal to the adoption of a reciprocity clause.

5. The representative of Morocco also supported the proposal by Finland and suggested that it could be improved by substituting the word "may" by the word "shall". That would facilitate the translation of the provision into other languages. The representatives of Mexico and India supported the proposed amendment. However, the representative of Sweden stated that the words "may not" were sufficiently strong and clear in English and should be left as they were in the proposal, adding that an appropriate translation could be found in other languages.

6. The representatives of the United States, France and Finland proposed that the word "part" should read "Part" in order to make it clear that what was meant was any of the parts of the Convention and not any portion of it. The representative of France suggested that the words "a whole Part" could be used in order to make things even clearer.

7. The representative of France suggested that the words ", nor make reservations on any Part of it, nor" be inserted in the proposal instead of ", or" between the words "it" and "without". However, the representative of Finland suggested that that proposed addition be omitted as, if included, it might give rise to some confusion, particularly since there was already a separate provision on the question of reservations.

8. At its 3rd meeting on 30 May 1990, the Working Group continued consideration of former article 86 (now art. 87). Speaking on the suggested change of the words "may not" to "shall not" in the Finnish proposal, the representative of Australia stated his clear preference for the original "may not".

9. The concept of reciprocity was discussed by the Working Group in connection with the Finnish proposal. The representative of Australia stated that, if no reciprocity clause was included in the Convention, the citizens of a country which was not a party to it would have privileges in another country which was a party to the Convention. On the other hand, since the Convention contained fundamental human rights, a reciprocity clause could have negative implications for such rights, which would be unacceptable. Such a reciprocity clause should therefore not be included. He agreed with the Finnish proposal since the Convention was an all-inclusive one in terms of the categories of workers covered. That in fact differentiated it from ILO Convention No. 143, which could be ratified in parts.

10. On the same issue, the representative of Italy stated that the idea of universality went against the idea of reciprocity. The corollary of such universality was the indivisibility of the Convention. He thus supported the Finnish proposal, which reflected that idea.

11. The representative of the Netherlands pointed out that the word "Part" in the Finnish proposal should be spelled with a capital "P" so that any exclusion of certain categories of migrant workers could be prevented.

12. The representative of China also spoke in favour of the indivisibility of the Convention. The Convention should be applied to all migrant workers and their families from wherever they came. If reciprocity was established, it would mean different treatment of migrant workers coming from different countries, something which would contravene the letter and spirit of the Convention.

13. Referring to the Finnish proposal, the representative of the Federal Republic of Germany pointed out that, at the Working Group's June 1989 session, the line had been drawn between a reservation and the idea contained in the proposed text (paras. 292 and 293 of document A/C.3/44/L). He could therefore not agree to reopen the question as had been done with the Finnish proposal.

14. The representative of the USSR, referring to the phrase "without prejudice to article 3" in the Finnish proposal, pointed out that article 3 did not mention cases under the optional article 76. Thus he suggested that a reference to the latter article be made in the Finnish text. The representatives of the Netherlands and Australia did not consider a reference to article 76 necessary, given its optional character.

15. At the invitation of the Chairman, the representative of France read out the French version of the Finnish proposal as follows:

"Un État ratifiant ou adhérent à la présente Convention ne saurait exclure l'application d'une quelconque partie de celle-ci, ni, sans préjudice de l'article 3, exclure de son application une catégorie particulière de travailleurs migrants."

16. At the 3rd meeting on 30 May 1990, the Finnish proposal was adopted by consensus as article 87 as follows:

Article 87

A State ratifying or acceding to the present Convention may not exclude the application of any Part of it or, without prejudice to article 3, exclude any particular category of migrant workers from its application.

17. The representative of the Federal Republic of Germany objected to the deletion of a clause on reciprocity such as that contained in article 86 of the text adopted on first reading. While conceding that an international treaty on human rights should, in principle, be universal and should therefore not contain a clause on reciprocity, he pointed out that the present Convention recognized, in addition to fundamental human rights, a number of rights relating to such matters as social security, taxation and independent paid activity, matters which, in many international treaties, were subject to reciprocity. Furthermore it was regrettable that the proposal currently before the Working Group did not seek merely to delete the clause on reciprocity but to replace it by a provision which would forbid States parties from excluding certain categories of migrant workers from the application of the Convention. At its fall 1989 session, the Working Group had, after lengthy debate, rejected a similar provision in the context of the present article 90. It was not only unfortunate but inadmissible that the Working Group should be asked to reconsider an issue which had already been settled in second reading. With regard to the substance of the proposal, he drew attention to the statements by his delegation, which were referred to in paragraph 28 of document A/C.3/44/1 and in paragraphs 315 and 330 of document A/C.3/44/4. However, realizing that the other members of the Working Group were in favour of deleting the clause on reciprocity and replacing it by a formula which would forbid the exclusion of certain categories of migrant workers from the application of the Convention, and not wishing to stand in the way of a consensus, he merely asked that his position should be reflected in the report.

18. The representative of Japan said that his delegation was in favour of a reciprocity clause in the Convention and reserved his position in that regard.

19. The representative of the USSR stated that the Convention had to apply to relations between all parties and therefore his delegation supported the idea of reciprocity.

20. The representative of France recalled that his delegation had supported the proposals in article 86 as it had emerged from the discussion in first reading, providing specifically for the application of the principle of reciprocity to a specific number of articles or parts of the draft convention. His delegation had agreed to go along with the consensus that had emerged within the Group in favour of replacing those proposals by a new article which would provide for a ban on the exclusion of any part of the convention or category of workers at the time of ratification. Application of a number of articles of the Convention could always be dependent upon the principle of reciprocity.
