

A/C.3/43/WG.I/CRP.3/Add.3
8 June 1988
ENGLISH
ORIGINAL: ENGLISH/FRENCH

Forty-third 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. Antonio GONZALEZ DE LEON (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

Addendum

Article 54

1. The Working Group took up consideration of a text for article 54 at its 9th meeting, on 6 June 1988, on the basis of article 54 of the first reading contained in document A/C.3/39/WG.1/WP.1, which reads as follows:

"[Without prejudice to the terms of their authorization of residence, migrant workers as defined in article 2 (1) (a) who are [in a regular situation] [lawful status] shall, in addition to the rights provided for in articles 25 and 44, enjoy equality of treatment with nationals of the receiving State in respect of

"(a) Security of employment;

"(b) Access to relief work organized by a public authority;

* A/43/50.

"(c) Subject to any conditions or restrictions imposed in pursuance of article 52, the provision of alternative employment in the event of loss of work; in that event they shall be given priority over other workers who seek admission to the receiving country.]"

2. The Working Group also had before it a revised proposal for article 54, submitted by the Mediterranean and Scandinavian (MESCA) group of countries and other interested parties, which reads as follows:

"Without prejudice to the terms of their authorization of residence, migrant workers shall, in addition to the rights provided for in articles 25 and 43, enjoy equality of treatment with nationals of the State of employment in respect of:

"(a) Security of employment;

"(b) Unemployment benefits;

"(c) Access to relief work organized by a public authority;

"(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity subject to article 52."

3. At the same meeting, the Chairman read out a text for article 54 which had emerged as a result of informal consultations, as follows:

"Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

"(a) Protection against dismissal;

"(b) Unemployment benefits;

"(c) Access to work schemes organized by a public authority;

"(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity subject to article 52."

4. Speaking on subparagraph (c), the representative of the United States of America, supported by the representatives of Canada and Yugoslavia, suggested to use the same language as contained in article 51 and to insert the word "public" between the words "access to" and "work schemes", to read: "access to public work schemes".

5. In this connection, the representative of France said that, in the view of his delegation, subparagraph (c) should only provide for access to an activity tending to combat unemployment.

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6. The representative of Italy suggested that the Working Group specify its intention that subparagraph (c) should mean public work schemes intended to combat unemployment.

7. In order to arrive at a consensus, the Chairman suggested to reword subparagraph (c) to read: "access to public work schemes intended to combat unemployment".

8. The representative of Algeria questioned the meaning of the words "travaux publics" in French.

9. The representative of France suggested the following formulation of subparagraph (c) for the French text: "participation dans les programmes de travaux publics destinés à lutter contre le chômage".

10. The representative of the Federal Republic of Germany, supported by the representatives of Canada and the Netherlands, said that his delegation could accept subparagraph (b) with, in the chapeau to article 54, the mention of article 27, which should be interpreted to mean that the reference to unemployment benefits in that subparagraph was significant only for those countries in which such benefits were not part of the social security system. On the other hand, his delegation could not accept subparagraphs (c) and (d); however, in order not to impede the consensus, it would be satisfied if its position were reflected in the report.

11. The representative of Australia said that his delegation interpreted article 54 as not augmenting or modifying the rights already afforded to a migrant worker under article 25, paragraph (1), concerning equality of treatment in respect of the employment relationship, or the rights already afforded to a migrant worker under article 27, paragraph (1), concerning equality of treatment in respect of social security, subject to applicable legislation and international agreements. The representative of Australia also endorsed the positions of Canada on the need for drafting discipline in respect of subparagraph (c) and to revert back to subparagraph (d) in the consideration of part V of the Convention.

12. The delegation of the United States agreed to join in the consensus on article 54 despite substantial concerns over the application of its provisions to certain categories of migrant workers and members of their families, particularly, specified employment workers, and reserved the right to return to these points in the discussion of part V of the Convention.

13. The representative of Norway said that his delegation endorsed the statement made by the delegation of the Federal Republic of Germany (also supported by the Netherlands and the United States) that when unemployment benefits are a part of the national social security system, article 27, paragraph (1), with its wording "in the State of employment", would apply and not article 54.

14. The delegations of Finland and Algeria accepted the formulation of article 54 on the understanding that the participation in public work schemes may also imply work in the private sector.

15. At the same meeting, article 54, as a whole, was adopted, with the option to reconsider the text when the Working Group dealt with part V of the Convention on specified employment workers. The text adopted on second reading is as follows:

Article 54

Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

- (a) Protection against dismissal;
- (b) Unemployment benefits;
- (c) Access to public work schemes intended to combat unemployment;

(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity subject to article 52.
