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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

Former article 37

1. At its 8th meeting, on 3 June 1988, the Working Group resumed consideration of a text for former article 37, which it had left pending from its fall session (see A/C.3/42/6, paras. 88-95), based on the text for the old article 37, as it appeared in document A/C.3/39/WG.1/WP.1 adopted at the first reading, which reads as follows:

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\* A/43/50.

"[Each State Party to the present Convention shall be free to establish in its national legislation the criteria governing admission, duration of stay, type of employment [or other economic activity] of migrant workers and members of their families and to decide in each case whether to grant any such authorization, subject to no limitations other than those provided for in this Convention. Any conditions subject to which the admission, stay, [and] employment [or other economic activity] of migrant workers and members of their families is authorized shall not be such as to impair, nor be applied so as to impair, the rights and guarantees provided for in this Convention.]"

"[Nothing in the present Convention shall affect the right of each State Party to establish in its national legislation the legal criteria governing the admission, duration of stay, type of employment or other economic activity and all other matters relating to the immigration and employment status of migrant workers and members of their families] [subject to such limitations as imposed on it by this Convention or other rules of international law.]]"

2. It may be recalled that during that session several delegations had expressed the view that article 37 did not seem indispensable to the Convention and the Working Group had thus decided, at its 4th meeting, on 28 September 1987, in light of its discussions, to consider reverting to a text for an article 37 at a later stage.

3. At the 8th meeting, the Chairman read out a text for former article 37 which had emerged as a result of informal consultations, reading as follows:

"Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States parties shall be subject to the limitations set forth in the present Convention."

4. At the same meeting, the Working Group adopted a text for old article 37 which it decided would be placed in part VIII of the Convention and renumbered accordingly, to read as follows:

#### Article 37

Nothing in the present Convention shall affect the right of each State party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States parties shall be subject to the limitations set forth in the present Convention.

5. The representative of the United States of America stated that his delegation agreed to join the consensus on the article which, in the first reading, had been numbered article 37. However, he wished to make it absolutely clear that it was his delegation's understanding that the article as adopted reaffirmed the well recognized principle that all States have the sovereign right to adopt and enforce their own immigration policies. In this regard, his delegation understood the word "admission", in this article, in its broadest concept, to encompass all terms and conditions pursuant to which migrant workers and members of their families may enter and remain in the United States, as well as those conditions which would result in their expulsion.

6. The representative of France stated that his delegation interpreted the expression "criteria governing admission" as referring to the body of rules governing the immigration of workers and members of their families in France, whether such persons had requested the necessary authorizations before or after entering French territory. The second sentence of the new article, in his delegation's view, meant that other matters related to legal situation and treatment were subject to the provisions of the Convention only if the latter so provided: that was an attempt to clarify the meaning of the sentence, which should logically have been so worded.

7. The delegation of Canada supported the statements made on article 37 by the delegations of the United States and France. The delegation of Canada agreed that the interpretation of the word "admission" in this article should be given its broadest ambit, so that it would include such issues as the duration of stay, the terms and conditions of admission and the general immigration policy of a State. In that regard, the Government of Canada would give such an interpretation to the word "admission" in its interpretation and application of the Convention.

8. The representative of Finland stated that the term "legal situation", in the second sentence of article 37, should not be interpreted as diminishing the human rights safeguards of migrant workers finding themselves in an illegal situation.

9. The representative of the Federal Republic of Germany stated that his delegation could not accept the second sentence of the article, since it was of the view that the provisions of the Convention did not contain only limitations on the States concerned; it would therefore be more accurate to speak of limitations "resulting from the provisions of the present Convention". However, in order not to block the consensus, he would be content if his position was duly reflected in the report. In addition, he endorsed the statement made by the representative of France.

10. The representative of Italy stated that it was his understanding that the first phrase of article 37 applies also to foreigners already present in the territory of the State who, not having been admitted as migrant workers or as members of their family, seek a permit of work and/or an authorization of residence as migrant workers or members of their family.

11. While stating that, in a spirit of compromise, she could join the consensus which was emerging with regard to article 37, the representative of Algeria said

that in her view none of the criteria adopted by the State of employment should diminish, or be applied in such a way as to diminish, the rights and guarantees provided for in the future Convention.

12. The representative of Sweden stated that his delegation had not favoured the inclusion of article 37 in the Convention. A provision saying that nothing in the Convention should affect the rights of States parties to establish certain rules could undermine the other provisions of the Convention and this gave particular concern as the Convention lays down fundamental human rights, which always have to be respected by all States.

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