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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 41

1. At its 6th and 7th meetings, on 24 and 25 September, the Working Group considered a text for article 41 on the basis of article 42, as contained in document A/C.3/39/WG.1/WP.1 and which then became article 41, reading as follows:

"[States of origin and States of employment shall collaborate with a view to facilitating, [without unreasonable restrictions,] [as provided for in their national legislation] the exercise by migrant workers and members of their families in a [regular situation] [lawful status] of the right:

"(a) To take part in the conduct of public affairs of their State of origin, directly or through freely chosen representatives;

"(b) To vote and to be elected at elections in their State of origin;

"(c) To have access, on general terms of equality, to public services in their country of origin.]"

2. At the Working Group's 6th meeting, the representative of Yugoslavia proposed to delete the words in brackets "without unreasonable restrictions", "regular situation", and "lawful status" and to remove the brackets surrounding the words "as provided for in their national legislation", maintaining these words in the text. He stressed the importance his delegation gave to the right to vote in elections in the State of origin for migrant workers.

3. The representative of the Federal Republic of Germany said that his delegation would prefer the deletion of this article from the text of the Convention as these matters pertain to consular arrangements made by the State of origin. However, in a spirit of co-operation, he would not block a consensus.

4. The representative of Australia expressed his concern at the potential obligation placed by the article on the State of employment. He expressed his view that matters such as the political relationship between a citizen and his Government and the access of a citizen to voting rights in his own country should be exclusively a matter for those two parties to resolve. It would be inappropriate to impose an obligation on second countries in that regard. The delegate expressed his view that in the item referring to collaboration between States of origin and States of employment, the article should refer only to States of employment "not obstructing" the exercise of political rights in the State of origin by migrant workers.

5. The representatives of the United States, Norway and France supported the view expressed by the representative of Australia.

6. The representative of Italy supported the representative of Yugoslavia in maintaining that article in the Convention, but proposed placing the words "as provided for in their respective national legislation" at the end of the last sentence after the word "right" and maintaining the words "without unreasonable restrictions", inserting them in the third line after the word "exercise".

7. The representative of the Soviet Union stated that his delegation was also in favour of retaining the article in the text of the Convention and that it preferred the wording "States of employment shall collaborate with a view to facilitating the procedures". He said that his delegation agreed with the representative of Yugoslavia to delete the words "without unreasonable restrictions".

8. In light of the discussion the representative of Yugoslavia proposed to reword the text to read:

"States of origin and States of employment shall, in so far as possible and practical, collaborate with a view to facilitating the exercise by migrant workers and members of their families of the right as provided for in national legislations".

9. At the Working Group's 7th meeting, on 25 September, and after informal consultations, the Chairman read out a text which emerged as a result of those consultations, as follows:

"Article 41

"1. In conformity with their national legislation migrant workers and members of their families shall have the right to participate in public affairs, to vote and to be elected at elections in their State of origin.

"2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights."

10. Commenting on that text the representative of the Netherlands expressed his doubts about the first paragraph. He would have preferred the wording of article 25 of the International Covenant on Civil and Political Rights. Nevertheless, he could agree with the text, on the understanding that the present article in no way limited the scope of article 25 of the aforesaid Covenant.

11. The representative of the Federal Republic of Germany stated that in the view of his delegation that provision did not necessarily mean that voting procedures of the State of origin would be conducted in the State of employment.

12. The representative of Tunisia stated that his delegation, while joining in the consensus, felt the need to place on record its doubts about the exercise by migrant workers living abroad of the right to participate in public affairs. Although Tunisian law recognized that right in principle in the case of all Tunisian citizens living in Tunisia, his delegation felt that it was not appropriate to include in the Convention provisions which, although taken from the covenants on human rights, did not square completely with the objectives of the Convention.

13. The representative of the United States, supported by the representative of Norway, expressed the concern of her delegation regarding the obligation which may be imposed upon the State of employment by the use of the word "facilitate". Her delegation would have preferred the term "will not impede".

14. At the Working Group's 7th meeting, on 25 September, article 41 was adopted as a whole, reading as follows:

"Article 41

"1. In conformity with their national legislation migrant workers and members of their families shall have the right to participate in public affairs, to vote and to be elected at elections in their State of origin.

"2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights."