

Forty-third session
THIRD COMMITTEE
Working Group I
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 51

1. At its 1st and 3rd meetings on 31 May and 1 June 1988, the Working Group resumed consideration of a text for article 51, which it had postponed to the present session, on the basis of article 51 of the first reading contained in document A/C.3/39/WG.1/WP.1, which reads as follows:

"[1. Without prejudice to article 37 of the present Convention, loss of employment shall not in itself imply the withdrawal of the authorization to work.]

"[1. In States of employment where migrant workers are admitted for an indefinite period of time and are free to choose any type of employment for any employer, loss of employment shall not in itself imply the withdrawal of the authorization to work without prejudice to article 37 of the present Convention.]

* A/43/50.

"[2. Migrant workers shall accordingly enjoy equality of treatment with nationals, particularly in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining during the remaining period of their authorization to work.]

2. The Working Group also had before it a revised proposal for article 51 submitted by the Mediterranean and Scandinavian (MESCA) group of countries and other interested delegations which was introduced by the representative of Finland. The revised proposal read as follows:

"1. Migrant workers who in the State of employment are not allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence, by the mere fact of the termination of their remunerated activity prior to the expiration of the work permit, except where the authorization of residence is expressly limited to the activity for which the work permit has been granted.

"2. Such migrant workers shall be free to seek alternative employment, relief work and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work."

3. The representative of the Federal Republic of Germany recalled that the Working Group had already debated a text for article 51 extensively at its last session and stated, in that connection, that his delegation would be able to accept the wording contained in paragraph 372 of the Working Group's report of the 1987 fall session (A/C.3/42/6) with or without the Algerian amendment contained in paragraph 373 of that report. However he considered that the provisions of article 51 were already covered in article 49, paragraph 2, and that the article was therefore a duplication.

4. The representative of Finland said that persons with a valid work permit should not be dependent merely on unemployment compensation in the case of loss of employment but should be allowed to seek retraining or other employment alternatives. In his view, that provision would thus cover a case not provided for in article 49 and therefore article 51 could not be considered as duplicating 49.

5. The representative of the Federal Republic of Germany, in referring to the MESCA proposal, stated that article 49, paragraph 2, concerned the effect of loss of employment on the migrant worker's residence permit while article 51 concerned the consequence of a loss of employment on his work permit. In his country the work permit was tied to a particular job and if the migrant worker lost that job and was hence without a valid work permit, he would consequently lose his residence permit. In his opinion, it was important to consider the impact of loss of employment on the migrant worker's residence permit.

6. The representative of Italy noted that article 51 should be considered in light of the capacity of the migrant worker to choose his job under article 49, the migrant worker was able freely to choose his remunerated activity while article 51 dealt with migrant workers who were not allowed freely to choose their activity.

If, therefore, the migrant worker was to lose his job, he might be obliged to leave the country. He felt that the idea behind the text was that the work permit remained valid and that the migrant worker should be allowed to work and seek another job and not be tied to only one employer.

7. The representative of Morocco pointed out that while redrafting article 51 the sponsors had tried to avoid a repetition of article 49. However, she felt that in doing so the sponsors should provide sufficient protection in case of loss of employment and the repercussions thereof. She therefore drew the Working Group's attention to the need for maximum guarantee for the type of migrant worker dealt with in the article.

8. The representative of the United States of America stated that his delegation supported the thrust of the MESCA proposal for article 51.

9. The representative of Algeria stated that in her opinion the MESCA text was more restrictive than the wording adopted in article 49, paragraph 2, and that her delegation was not able to accept such a text.

10. The representative of India stated that his delegation supported the MESCA proposal.

11. The representative of the Netherlands stated that in his country work permits were attributable only to employers and not to employees. Therefore, it would be impossible to conceive of a situation where an employee would have a work permit and therefore it would be difficult for his delegation to accept a guarantee of security of employment if the migrant worker had already lost his job. However, he said that his delegation could endorse the MESCA proposal.

12. At the Working Group's 3rd meeting, on 1 June and after informal consultations, the Chairman read out a text which had emerged as a result of those consultations, as follows:

"Migrant workers who in the State of employment are not allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation, nor shall they lose their authorization of residence, by the mere fact of the termination of their remunerated activity prior to the expiration of the work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work".

13. The representative of the Federated Republic of Germany, said that since his delegation had opposed the adoption of article 49, paragraph 2, which limited the repercussions of the termination of remunerated activity on the validity of the authorization of residence in the case of migrant workers allowed freely to choose their remunerated activity, it could not accept the provision in the first sentence of article 51 which referred to the consequences of termination of remunerated

activity for the validity of the authorization of residence in the case of migrant workers not allowed freely to choose their remunerated activity. His delegation could have accepted that provision if, as in the version of the first reading, it had referred to the consequences of termination of remunerated activity for the authorization to work. Where the second sentence of article 51 was concerned, the representative of the Federal Republic of Germany opposed its inclusion in the Convention, pointing out that in his delegation's view the question of participation of migrant workers in retraining activities in the event of termination of remunerated activity could be dealt with only in the context of the right to unemployment benefit, which was covered by other provisions of the Convention, such as article 27. While maintaining his objections, the representative of the Federal of Germany emphasized that if they were not shared by the other members of the Working Group, his delegation would not oppose the consensus and would be content with a reflection of its position in the report.

14. At the same meeting, the Working Group adopted article 51 on second reading, as follows:

Article 51

Migrant workers who in the State of employment are not allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of the work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.
