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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 59

1. The Working Group considered article 59 regarding seasonal workers at its 11th and 12th meetings on 7 June 1988 on the basis of article 58 as contained in document A/C.3/39/WG.1/WP.1 reading as follows:

"(1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in parts II and III of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment.

"[(2) A seasonal worker who, not counting seasonal interruptions, has been lawfully employed or working in the State of employment for an aggregate period of 24 months shall be entitled to take up other employment [or economic activity] subject to any conditions or limitations imposed in accordance with article 52.]"

* A/43/50.

2. The Working Group also had before it a revised text for article 59 submitted by the MESCA Group reading as follows:

"(1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment.

"(2) The State of employment shall favourably consider granting seasonal workers who have been employed in its territory for a significant period of time the possibility of taking up other remunerated activities, giving them priority over other workers, who seek admission to that State subject to applicable bilateral and multilateral agreements."

3. At the 11th meeting the Chairman announced that following informal consultations the following addition was proposed at the end of paragraph (1) of the MESCA text:

"... bearing in mind that their presence in the State of employment is restricted to part of the year."

4. Agreeing with the phrase read out by the Chairman, the representative of the Federal Republic of Germany stated that his delegation wished to see listed in paragraph (1) the articles of the convention applicable to seasonal workers. He expressed his opposition to the inclusion of paragraph (2) in article 59.

5. The representative of the Netherlands suggested to amend the Chairman's text by adding the phrase:

"... and as far as these rights do not contradict their status as seasonal workers."

6. Thus the text for paragraph (1) before the Working Group read as follows:

"(1) Seasonal workers as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in Part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment, bearing in mind that their presence in the State of employment is restricted to part of the year and as far as these rights do not contradict their status as seasonal workers."

7. The representative of the United States suggested to amend the above-mentioned text by adding after "provided for in Part IV of this Convention" the phrase "except those set forth in article 43 (b), (c) and (d), article 52 and article 54 (d)."

8. The representative of Italy suggested to amend the last part of the text by adding to the MESCA proposal the phrase "and which are compatible with their status in that State as seasonal workers".

9. The representative of Algeria stated that in paragraph (1) of article 59 reference should be made not only to Part IV of the Convention but also to Part III in order to avoid any misunderstanding.

10. At the 12th meeting on 7 June 1988, the Chairman announced that following informal consultations on paragraph (1) of article 59 the text at the end of the MESCA proposal had been further amended. Thus paragraph (1) as it stood for the Group's consideration read as follows:

"(1) Seasonal workers, as defined in article 2 (2) (b), shall be entitled to all of the rights provided for in Part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment and which are compatible with their status in that State as seasonal workers, bearing in mind that their presence in the State of employment is established only for part of the year."

11. The representative of Finland said that the term "compatible" could give rise to different interpretations. Therefore, he suggested the following alternative sentence to replace the last part of paragraph (1): "These rights shall not affect their status as seasonal workers."

12. The representative of the United States suggested a slight amendment to the text read out by the Chairman so that the end of paragraph (1) would read:

"... bearing in mind that they are present in that State for only part of the year."

13. After a brief discussion, the Working Group at its 12th meeting on 7 June adopted paragraph (1) of article 59 on second reading as follows:

1. Seasonal workers, as defined in article 2 (2) (b), shall be entitled to the rights provided for in Part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment and which are compatible with their status in that State as seasonal workers, bearing in mind that they are present in that State for only part of the year.

14. The representative of France stated that his delegation estimated that the right to family reunification is not included among the rights recognized in article 59 for seasonal workers.

15. The Working Group then turned to paragraph (2) of article 59. The representative of the Federal Republic of Germany recalled that his delegation would prefer the deletion of this paragraph.

16. The representative of Australia suggested that paragraph (2) be preceded by the phrase "Subject to paragraph (1) above ...".

17. The representative of Norway preferred the deletion of paragraph (2). If the paragraph was retained he would suggest the deletion of the words "priority" and

"favourably". The representative of the United States shared th's view and said that the Australian suggestion would make adoption easier for his delegation.

18. The Chairman suggested that the term "significant period of time" could be replaced by "prescribed period of time" the understanding being that the State of employment would prescribe this. The representatives of Greece and Finland underlined the importance of retaining paragraph (2) of article 59.

19. Regarding the text of paragraph (2) of article 59 in the MESCA proposal, the representative of France stated that his delegation preferred that the text end after the words "remunerated activities" and that the rest of the paragraph be deleted.

20. The representative of Canada drew attention to the fact that within Canadian legislation, rights of seasonal workers are defined in a manner which would make it extremely difficult to give seasonal workers priority in taking up remunerated activities other than those for which they were admitted to Canada over other workers who seek admission to Canada.

21. After this debate the Working Group at its 12th meeting on 7 June 1988 adopted paragraph (2) of article 59 on second reading as follows:

2. The State of employment shall favourably consider granting seasonal workers who have been employed in its territory for a significant period of time, the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.

22. Thus article 59 was adopted at second reading as follows:

Article 59

1. Seasonal workers, as defined in article 2 (2) (b), shall be entitled to the rights provided for in Part IV of this Convention which can be applied to them by reason of their presence and work in the territory of the State of employment and which are compatible with their status in that State as seasonal workers, bearing in mind that they are present in that State for only part of the year.

2. The State of employment shall favourably consider granting seasonal workers who have been employed in its territory for a significant period of time, the possibility of taking up other remunerated activities and giving them priority over other workers who seek admission to that State, subject to applicable bilateral and multilateral agreements.
