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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. Claude HELLER (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

Addendum

PART VII

Application of the Convention

Article 72

1. (a) For the purpose of reviewing the application of the present Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter referred to as "the Committee");

(b) The Committee shall consist, at the time of entry into force of the present Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the present Convention.

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\* A/45/50.

2. (a) Members of the Committee shall be elected by secret ballot by the States Parties from a list of persons nominated by the States Parties, due consideration being given to equitable geographical distribution, including both States of origin and States of employment, and to the representation of the principal legal systems. Each State Party may nominate one person from among its own nationals;

(b) Members shall be elected and serve in their personal capacity.

3. The initial election shall be held no later than six months after the date of the entry into force of the present Convention and subsequent elections every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to all States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties that have nominated them, and shall submit it to the States Parties not later than one month before the date of the corresponding election, together with the curricula vitae of the persons thus nominated.

4. Elections of members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of votes of the States Parties present and voting.

5. (a) The members of the Committee shall serve for a term of four years. However, the terms of five of the members elected in the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting of States Parties;

(b) The election of the four additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the entry into force of the present Convention for the forty-first State Party. The term of two of the additional members elected on this occasion shall expire at the end of two years; the names of these members shall be chosen by lot by the Chairman of the meeting of States Parties;

(c) The members of the Committee shall be eligible for re-election if renominated.

6. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party that nominated the expert shall appoint another expert from among its own nationals for the remaining part of the term. The new appointment is subject to the approval of the Committee.

7. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee.

8. [The members of the Committee shall receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide.]

OR

[States Parties shall be responsible for:

(a) The expenses of the members of the Committee while they are performing Committee duties; and

(b) Expenses incurred in connection with the holding of meetings of States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 7 of this article.]

9. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 73

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the Convention:

(a) Within one year after the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years and whenever the Committee so requests.

2. Reports made under this article shall also indicate factors and difficulties, if any, affecting the implementation of the present Convention and shall include information on the characteristics of migration flows in which the State Party concerned is involved.

3. The Committee shall decide any further guidelines applicable to the content of the reports.

4. States Parties shall make their reports widely available to the public in their own countries.

Article 74

1. The Committee shall examine the reports submitted by each State Party and shall transmit such comments as it may consider appropriate to the State Party concerned. This State Party may submit to the Committee observations on any comment made by the Committee in accordance with this article. The Committee may request supplementary information from States Parties when considering these reports.

2. The Secretary-General of the United Nations shall, in due time before the opening of each regular session of the Committee, transmit to the Director-General of the International Labour Office copies of the reports submitted by States Parties concerned and information relevant to the consideration of these reports in order to enable the Office to assist the Committee with the expertise the Office may provide regarding those matters dealt with by the Convention that fall within the sphere of competence of the International Labour Organisation. The Committee shall consider in its deliberations such comments and materials as the Office may provide.

3. The Secretary-General of the United Nations may also, after consultation with the Committee, transmit to other specialized agencies as well as to intergovernmental organizations, copies of such parts of these reports as may fall within their competence.

4. The Committee may invite the specialized agencies and organs of the United Nations, as well as intergovernmental organizations and other concerned bodies to submit, for consideration by the Committee, written information on such matters dealt with in the Convention as fall within the scope of their activities.

5. The International Labour Office shall be invited by the Committee to appoint representatives to participate, in a consultative capacity, in the meetings of the Committee.

6. The Committee may invite representatives of other specialized agencies and organs of the United Nations, as well as of intergovernmental organizations, to be present and heard in its meetings whenever matters falling within their field of competence are considered.

7. The Committee shall present an annual report to the General Assembly of the United Nations on the implementation of the present Convention, containing its own considerations and recommendations, based, in particular, on the examination of the reports and any observations presented by States Parties.

8. The Secretary-General of the United Nations shall transmit the annual reports of the Committee to the States Parties to the present Convention, the Economic and Social Council, the Commission on Human Rights of the United Nations, the Director-General of the International Labour Office and other relevant organizations.

Article 75

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The Committee shall normally meet annually.
4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 76

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Convention considers that another State Party is not fulfilling its obligations under the present Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged;

(d) Subject to the provisions of subparagraph (c) of this paragraph, the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the present Convention;

(e) The Committee shall hold closed meetings when examining communications under this article;

(f) In any matter referred to it in accordance with subparagraph (b) of this paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b) of this paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b) of this paragraph, submit a report:

- (i) If a solution within the terms of subparagraph (d) of this paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Convention have made a declaration under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

#### Article 77

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim that their individual rights as established by the present Convention have been violated by that State Party. No communication shall be received by the Committee if it concerns a State Party that has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where, in the view of the Committee, the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to that individual.

4. Subject to the provisions of paragraph 2 of this article, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention that has made a declaration under paragraph 1 and is alleged to be violating any provisions of the present Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

5. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when ten States Parties to the present Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

#### Article 78

The provisions of article 76 of the present Convention shall be applied without prejudice to any procedures for settling disputes or complaints in the

field covered by the present Convention laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies and shall not prevent the States Parties from having recourse to any procedures for settling a dispute in accordance with international agreements in force between them.

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