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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 83

1. The Working Group considered a text for article 83 on second reading at the 6th and 7th meetings on 1 and 2 June 1989, on the basis of article 83 of the first reading contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"Article 83

"1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the fifteenth instrument of ratification, acceptance, approval or accession.

"2. For each State ratifying the present Convention or acceding to it after the deposit of the fifteenth instrument of ratification, acceptance, approval or accession, it shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification, acceptance, approval or accession."

* A/44/50/Rev.1.

2. During the consideration of this article, the Working Group had before it a proposal for amendment relating to article 83 submitted by Japan contained in document A/C.3/44/CRP.3. In that proposal the delegation of Japan suggested to substitute the word "fifteenth", in paragraph 1, by the words "a figure higher than the twentieth". Regarding paragraph 2, they proposed to reword it to read:

"2. For each State ratifying, accepting, approving or acceding to the present Convention after its entry into force, it shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification, acceptance, approval or accession."

3. After a brief discussion, the Working Group agreed that the few drafting problems that the article may raise could be resolved in informal consultations. The Working Group thus decided to take up article 83 in informal consultations.

4. At its 7th meeting on 2 June, the Chairman read out the text for article 83 which emerged from the informal consultations as follows:

"Article 83

"1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

"2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession."

5. After a brief discussion, the Working Group agreed to adopt article 83. The text of article 83 adopted by the Working Group on second reading reads as follows:

"Article 83

"1. The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession.

"2. For each State ratifying or acceding to the present Convention after its entry into force, the Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of its own instrument of ratification or accession."

Article 84

1. At its 7th meeting on 2 June 1989, the Working Group took up consideration of a text for article 84 based on the text adopted during the first reading contained in document A/C.3/39/WG.1/WP.1, reading as follows:

"Article 84

"1. Where a State Party is constituted as a federal State, the national Government of such State Party shall implement all the provisions of the present Convention over whose subject matter it exercises jurisdiction.

"2. With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national Government shall immediately take suitable and effective measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units adopt appropriate measures for the fulfilment of the present Convention."

2. The representatives of the United States and the Federal Republic of Germany express support for the text adopted during the first reading on the basis that such a text would greatly facilitate the ratification of this Convention by federal States. The representative of the ILO drew the attention of the Working Group to the fact that the ILO Constitution contained such a clause.

3. The representatives of Canada, the Netherlands, Sweden, Japan, Finland, Algeria, Italy and Australia took the view that there was no need for a clause explicitly covering the issue of ratification by States with a federal structure because in ratifying the Convention it would be up to federal governments to ensure that its constituent States implemented the provisions of the Convention. In addition, the representative of Canada stated that with the exception of the Convention relating to the Status of Refugees, it was unusual for human rights instruments to contain federal provisions. He further indicated that it was improper to demand that unitary States implement the Convention nation-wide, whilst allowing the constituent parts of federal governments to be able to avoid implementing the Convention. The representative of the Netherlands also considered it inappropriate to allow parts of countries which had ostensibly ratified the Convention to be able to avoid implementing it. The representative of Finland indicated that this could result in migrant workers being treated differently according to which part of a federation they lived in. The representative of Sweden indicated that a federal clause ran counter to the notion of the universality of human rights. He also added that no such clause had been included in the recently concluded draft text of the Convention on the Rights of the Child.

4. The representative of Morocco was of the view that it would be desirable to include a federal clause in the Convention but that such a provision should be worded to take into account the concerns raised by various delegations.

5. In an effort to reach a compromise, the representative of Italy suggested that the provision could stipulate which rights had to be applied nation-wide and which rights the constituent parts of federal nations could decide not to implement. The

representatives of Canada and Australia took the view that it would not be appropriate to establish different categories of rights and that any sort of selection process would be difficult to carry out anyway.

6. The representatives of Italy, Australia and Canada were all of the view that if the Working Group chose to adopt a federal provision, then it should also decide that federal nations should, as a condition precedent to ratifying the Convention, ensure the agreement of its constituent parts to the implementation of the Convention.

7. In view of the Working Group's inability to reach a consensus agreement on whether or not to have a federal provision, and on what form such a provision might take, it decided to suspend further debate on the matter until informal consultations had been carried out.

8. In view of its inability to arrive at a consensus in informal consultations, the Working Group decided to postpone further consideration of a text for this article until its next session.
