

A/C.3/44/WG.1/CRP.7/Add.9
5 October 1989

ORIGINAL: ENGLISH

Forty-fourth session
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. Claude HELLER (Mexico)

Vice-Chairman: Mr. Juhani LONNROTH (Finland)

Addendum

Article 62

1. At its 3rd meeting, on 27 September 1989, the Working Group considered article 62 on the basis of the following texts appearing in document A/C.3/44/WG.1/CRP.6.

"A. Pending parts of the proposal for article 62 contained
in document A/C.3/39/WG.1/WP.1

"1. (a) To have written employment contracts in a language they understand, the provisions of which shall not derogate from the rights provided for in this Convention. States concerned shall endeavour insofar as practicable to take measures to ensure that such employment contracts are not modified or substituted to the disadvantage of migrant workers;

"(b)*

* Elements contained in paragraph 1 (b) of the present proposal were incorporated into paragraph 1 (a) and adopted on second reading by the Working Group in the spring of 1988 (A/C.3/43/1, para. 315).

"(c) [Without prejudice to the rights recognized in article 48], to have their earnings paid in their country of origin or the country of their normal residence;

"2. States of employment shall encourage the installations by the [enterprise or] employer carrying out the specific project of any necessary facilities for project-tied migrant workers and members of their families, such as housing, schools, medical and recreational services. Any expenditure arising out of the application of this paragraph shall be borne by the [enterprise or] employer concerned unless otherwise agreed with the State of employment [concerned] States.

"3. Subject to the provisions of the present Convention applicable to project-tied migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific measures on social and economic matters relating to those workers.

"4. Without prejudice to existing instruments on social security and double taxation among States concerned, these States concerned shall take appropriate measures to ensure that project-tied workers:

"(a) Are adequately covered for the purposes of social security and do not suffer in their State of origin or normal residence any diminution or denial of rights or duplication of social security deductions;

"(b) In addition to the provisions of article 49, they do not suffer from double taxation."

"B. Pending parts of the proposal for article 62 by the Mediterranean and Scandinavian (MESCA) group of countries as reproduced in paragraph 295 of the Working Group's report (A/C.3/43/1)

"...

"[(b) To have written employment contracts in a language they understand, the provisions of which shall not derogate from the rights provided for in the present Convention. States concerned shall endeavour insofar as practicable to take measures to ensure that such employment contracts are not modified or substituted to the disadvantage of migrant workers;

"[(c) To have their earnings paid in their State of origin or the State of their normal residence, without prejudice to article 47 of the present Convention.

"[2. States concerned shall facilitate the installation by the employer carrying out the specific project of any necessary facilities for project-tied

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migrant workers and members of their families, such as housing, schools, medical and recreational services. Any expenditure arising out of the application of this paragraph shall be borne by the employer concerned unless otherwise agreed with the States concerned.

"[3. Subject to the provisions of the present Convention applicable to project-tied migrant workers, the States concerned shall endeavour, whenever appropriate, to establish by agreement specific measures on social and economic matters relating to those workers.

"[4. Without prejudice to existing instruments on social security and double taxation among States concerned, these States concerned shall take appropriate measures to ensure that project-tied workers:

"[(a) Are adequately covered for the purposes of social security and do not suffer in their State of origin or normal residence any denial of rights or duplication of social security deductions;

"[(b) Do not suffer from double taxation, without prejudice to article 48.]"

2. The representative of Finland recalled that subparagraph (a) of paragraph 1 of article 62 had already been adopted. He said that project-tied workers were a new category which had to be covered and he expressed his support for the MESCA proposal.

3. The representative of Algeria stated her acceptance of the inclusion of project-tied workers in the Convention but cautioned against the creation of a "super-category" with supplementary rights.

4. The representative of Japan said that the remaining parts of article 62 should be deleted altogether or should consist only of paragraph 1 and subparagraph (a) of paragraph 1, which had already been adopted. Regarding the MESCA proposal, she stated that subparagraph (b) of paragraph 1 should be deleted; in paragraph 2 the last sentence should be deleted; and that paragraph 3 should also be deleted.

5. The representative of Italy pointed out that the idea of those paragraphs of article 62 according special treatment to project-tied workers was not precise. In fact, the inclusion of certain rights in article 62 meant that only those rights applied to project-tied workers and that project-tied workers were excluded from the general scope of the Convention. Thus, for example, those workers would be excluded from the application of article 43 on the right to housing.

6. The representatives of the United States and the Federal Republic of Germany said that the article was according project-tied workers certain additional rights, which seemed inappropriate. The representative of the Federal Republic of Germany said that, besides, it was not clear in the proposed formulation whose obligations were those described and which State should supervise those obligations; the article, he suggested, should be reduced to the absolute minimum.

7. The representative of Morocco noted that most of the projects employing project-tied workers were carried out in developing countries. If such foreign workers enjoyed more favourable treatment, that would create problems for nationals of the same profession. The developing States where the projects took place could not provide all those exceptional rights.

8. The representatives of Yugoslavia was in favour of maintaining the category of project-tied workers in the Convention. In paragraph 2 she suggested adding that migrant workers should receive information on working conditions.

9. The representative of Australia said that the assumption of project-tied migrant workers coming from the developed world and not from the developing world was not precise; large numbers of workers from developing countries in fact worked as project-tied workers. The Convention was not according them additional rights since certain articles of the Convention were not applicable to them. The Convention had to ensure the protection of project-tied workers so that they were not unnecessarily disadvantaged by such exceptions.

10. After some discussion the Working Group decided to take up article 62 in informal discussions.

Article 62 bis

11. At its 8th meeting, on 29 September 1989, the Working Group had before it article 62 bis regarding specified employment workers (A/C.3/44/WG.1/CRP.6), which read as follows:

"Text of article 62 bis proposed by Australia, Canada
and the United States of America

"[1. Specified employment workers as defined in article 2 (2) (g) shall be entitled to all of the rights relating to migrant workers in part IV of the Convention, excluding those set forth in article 43 (1) (b) and (c); in article 43 (1) (d) as it pertains to social housing schemes; and in articles 52 and 54 (d).

"[2. Members of the family of specified employment workers shall be entitled to all of the rights relating to family members of migrant workers in part IV of the Convention, excluding those set forth in [article 50 and] article 53.]

12. Action on the article was deferred to another meeting.

13. At its 12th meeting, on 4 October 1989, the Working Group resumed its consideration of article 62 bis.

14. The representatives of the United States and Denmark were of the view that, following informal consultations which had been carried out concerning the text of the provision, the Working Group was ready to adopt the article.

15. The representative of Yugoslavia, supported by the representative of India, indicated that her acceptance of article 62 bis was dependent on the acceptance by the Working Group of article 62.

16. The representatives of Australia, the Netherlands, Sweden and the United States regretted that the representatives of Yugoslavia and India should make the adoption of article 62 bis dependent on acceptance of article 62, which was wholly unconnected with it.

17. In view of the foregoing exchanges, the Working Group decided to take up further consideration of the article in informal consultations.
