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A/C.3/44/WG.1/CRP.5/Rev.1

14 September 1989

SEP 23 1989

UN/ISA COLLECTION ORIGINAL: ENGLISH

Forty-fourth session
THIRD COMMITTEE
Working Group I
Item 12 of the preliminary list*

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Draft International Convention on the Protection of the
Rights of All Migrant Workers and Their Families

Working paper submitted by Japan containing proposals relating
to articles 50, 56, 62, 70 and 74 and a new article of the
draft Convention still pending on second reading

Article 50

1. This article should be understood to mean that, where separate permissions are required for a migrant worker and members of his family by national legislation, the permission for family members of a migrant worker to stay shall not be denied in the case of the death of the migrant worker, divorce or legal separation during the remaining period of the permission. The State shall not be obligated to grant him or her new permission to stay. In this respect it should be expressly indicated that this article is applicable solely to the family members in a regular situation.

2. The text proposed by the Chairman of the Working Group should therefore be amended as follows:

"States of employment shall, in the case of death of a migrant worker, divorce or legal separation, according to applicable law, give favourable consideration to granting to the members of the family who are in a regular situation (in lawful status) of the migrant worker permission to stay during the remaining period of their authorization."

* A/44/50/Rev.1.

Article 56, paragraph 1

3. Subparagraph (d) should be adopted, reading as follows:

"(d) In accordance with the applicable laws and regulations of the State of employment."

Article 62

4. There is no reason why project-tied workers should be given special treatment compared with the nationals of the State of employment or other migrant workers. Article 62 should therefore be deleted.

5. If deletion is difficult, "in case of necessity" should be inserted after "encourage" in paragraph 2.

Article 70

6. Paragraph 8 should read as follows:

"States Parties shall be responsible for the expenses of the members of the Committee while they are performing Committee duties."

Article 74

7. The MESCA text (A/C.3/43/WG.1/CRP.5) should be amended as follows.

8. Paragraph 1 should read:

"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 which 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:"

9. Delete paragraph 2 of the MESCA text and replace with the following:

"(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 the State Party. Within three months after the receipt of the communication the receiving State shall afford the State which 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;"

10. Paragraph 3 of the MESCA proposal should be replaced with the following:

"(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;"

11. Subparagraphs (d) and (e) would reproduce paragraphs 4 and 5 of the MESCA text, respectively.

12. The text of paragraph 6 of the MESCA proposal should be amended as follows and would become subparagraph (f):

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

13. The text of paragraph 7 of the MESCA proposal should be amended as follows and would become subparagraph (g):

"(g) The States parties concerned, referred to in subparagraph (b), 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;"

14. The text of paragraph 8 of the MESCA proposal should be amended as follows and would become subparagraph (h):

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

- (i) If a solution within the terms of subparagraph (d) is reached, the Committee shall confine its report to a brief statement of the facts and the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall confine its report to a brief statement of facts; the written submissions and record of the oral submissions made by the States parties concerned shall be attached to the report. In every matter the report shall be communicated to the States parties concerned."

15. A new subparagraph (i) should be inserted, reading as follows:

"(i) The Committee shall include in its annual report under article 76 a summary of its activities under this paragraph of this article."

16. New paragraph 2 should read as follows:

"2. The provisions of this article shall come into force when ** 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 which 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."

17. A new article should be included in the draft Convention relating to State Parties' financial responsibility for the implementation of the Convention, reading as follows:

Article ...

"1. The States Parties shall be responsible for all expenses incurred in connection with the expenses of the members of the Committee pursuant to article 70, paragraph 7, the holding of meetings of the States Parties and of the Committee, including reimbursement of the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to article 71, paragraph 4.

"2. Any member of the Committee who is a national of the State Party to the present Convention which is in arrears with the payment of its contribution for the current year and the calendar year immediately preceding it shall not be eligible as a member of the Committee, although this provision shall not apply to the first election. The terms of office of any such member who is already a member of the Committee shall terminate at the time of the elections provided for in article 70, paragraph 4, of the present Convention."
