

ARTICLE 62 (2)

Table of Contents

	<u>Paragraphs</u>
Text of Article 62 (2)	
Introductory Note	1 - 3
I. General Survey	4 - 21
A. Recommendations	4 - 12
B. Studies and reports	13 - 20
C. Procedures for the handling of communications concerning human rights	21
II. Analytical Summary of Practice	22 - 87
A. The competence of the Economic and Social Council to make recommendations to non-member States	24 - 28
B. The competence of the Economic and Social Council to make recommendations to the Trusteeship Council	29 - 33
C. The power of the Economic and Social Council to conduct inquiries or investigations in matters relating to human rights .	34 - 43
1. Refugees and displaced persons	35 - 37
2. Forced labour	38 - 42
3. Trade-union rights	43
D. The power of the Economic and Social Council to evaluate allegations of violations of human rights and to make recommendations thereon	44 - 57
1. Human rights in Palestine	45 - 48
2. Freedom of information	49 - 50
3. Trade-union rights in particular countries	51 - 54
4. Trade-union rights in Trieste	55 - 56
5. Forced labour	57
E. Questions relating to the procedure for dealing with communications concerning human rights	58 - 68
1. The competence of the Council to deal with communications concerning human rights	63 - 65
2. Communications concerning human rights and relating to Trust Territories	66 - 68
F. Questions relating to the procedure for dealing with allegations regarding infringements of trade-union rights	69 - 82
1. Delegation of responsibility	75 - 76
2. The consent of Governments	77 - 79
3. Allegations relating to Trust Territories	80 - 82
G. Human rights and domestic jurisdiction	83 - 87

TEXT OF ARTICLE 62 (2)

"It [the Economic and Social Council] may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."

INTRODUCTORY NOTE

1. This study covers recommendations, made by the Economic and Social Council under Article 62 (2) for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. It does not cover recommendations relating to human rights made by the Council under other provisions of the Charter, for instance, Article 62 (3) and (4), or Article 63 (2). 1/
2. Article 62 (2) does not specifically provide that the Council may "make or initiate studies and reports" - the wording used in Article 62 (1) - in the field of human rights; in practice, however, it has made or initiated such studies and reports. Since the making or initiating of a study or report often precedes the making of a recommendation, and since a recommendation is sometimes made with a view to making or initiating a study or report, studies and reports in the field of human rights will also be dealt with here.
3. In addition, this study will cover the activities of the Council with respect to communications addressed to the United Nations concerning human rights in general and trade-union rights in particular.

I. GENERAL SURVEY

A. Recommendations

4. In the course of its first eighteen sessions and one special session, the Economic and Social Council has made some 140 recommendations under Article 62 (2).
5. These recommendations have been related to a variety of subjects in the field of human rights, such as freedom of information, freedom of association (trade-union rights), the status of women, refugees and stateless persons, slavery and servitude, forced labour, prevention of discrimination, protection of minorities, et cetera.
6. In making recommendations, the Council has used not only the word "recommends", but also such expressions as "calls upon", "suggests", "proposes", "expresses the hope", "invites", "requests", "urges", "appeals to", et cetera.
7. While Article 62 (1) stipulates that the Council may make recommendations with respect to economic, social and related matters "to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned", Article 62 (2) does

1/ See in this Repertory under Article 55 for a discussion of the scope of the meaning of the term "human rights and fundamental freedoms" and of the methods employed by the United Nations for the promotion of human rights.

not stipulate the addressees of recommendations made by the Council for the promotion of human rights. In practice, the Council has made recommendations to the General Assembly, to the Trusteeship Council, to States Members and non-members of the United Nations, to specialized agencies and to non-governmental bodies.

8. For instance, the Council transmitted to the General Assembly by resolution 151 (VII) the draft International Declaration of Human Rights, and by resolution 319 A (XI) the draft Statute of the Office of the High Commissioner for Refugees. It has also made recommendations to the General Assembly concerning the following: freedom of information, by resolutions 306 B and C (XI); the status of women, by resolutions 445 C (XIV), 504 F (XVI) and 547 H (XVIII); refugees and stateless persons, by resolutions 248 A (IX), 319 A (XI), 500 (XVI) and 549 (XVIII); prevention of discrimination and protection of minorities, by resolution 502 G (XVI); trade-union rights, by resolution 277 (X); slavery, by resolution 475 (XV); and the right of petition, by resolution 236 B (IX). Recommendations to the General Assembly have often been made by the Council pursuant to previous decisions of the General Assembly; this has been the case, for example, in matters connected with refugees and stateless persons under Council resolutions 248 A (IX), 319 A (XI), 500 (XVI) and 549 (XVIII) mentioned above. Some recommendations to the General Assembly have been made on matters which required the approval of the Assembly, as, for example, by Council resolution 502 G (XVI) on technical assistance in the fields of prevention of discrimination and protection of minorities, or on matters which were related to the activities of the Assembly, as, for example, by Council resolution 445 C (XIV) under which the Council invited the General Assembly to make a request to the Committee on Information from Non-Self-Governing Territories on the subject of deprivation of women of certain essential human rights.

9. The Economic and Social Council has made recommendations to the Trusteeship Council concerning the observance of human rights and the status of women in Trust Territories by resolutions 48 (IV), 275 D and E (X), 385 E (XIII), 445 C (XIV), 504 F (XVI) and 547 H (XVIII).

10. The Council has made a very large number of recommendations to States (and a few to various authorities of States), namely to:

(a) States Members of the United Nations, concerning, for instance, the status of women, by resolutions 121 (VI), 154 A, B, F and G (VII), 242 C (IX), 385 E and G (XIII), 504 I and J (XVI) and 547 F and I (XVIII); freedom of information, by resolutions 241 A (IX), 306 D (XI), 374 (XIII) and 522 (XVII); trade-union rights, by resolution 194 (VIII); prevention of discrimination, by resolution 303 G (XI); and refugees and displaced persons, by resolution 2 (II);

(b) States Members and non-members concerning freedom of information, by resolutions 387 B (XIII) and 522 C, D, F and G (XVII); the status of women, by resolutions 445 C, D and E (XIV), 504 D and H (XVI) and 547 D, E, J and K (XVIII); refugees and stateless persons, by resolutions 208 (VIII), 248 A (IX), 319 B (XI), 332 (XI) and 352 (XII); prevention of discrimination, by resolution 502 B (XVI); protection of minorities, by resolution 303 F (XI); forced labour, by resolutions 237 (IX) and 524 (XVII); slavery, by resolutions 475 (XV) and 525 A (XVII); the Yearbook on Human Rights, by resolution 303 H (XI); and the plight of survivors of concentration camps, by resolution 386 (XIII);

(c) Groups of States or individual States, Members or non-members, concerning trade-union rights, by resolutions 351 (XII), 474 B and C (XV) and 523 A and B (XVII); the status of women, by resolution 385 H (XIII); freedom of information, by resolution 522 K (XVII); refugees and stateless persons, by resolution 393 (XIII); and

(d) Various authorities, concerning trade-union rights, by resolutions 351 (XII), 2/ 444 (XIV) 3/ and 474 E (XV); 4/ and survivors of concentration camps in resolutions 353 (XII) and 386 (XIII). 5/

11. The Council has made recommendations to the specialized agencies on various topics; for example:

(a) To the International Labour Organisation (ILO), by resolutions 195 (VIII) and 350 (XII), on forced labour; by resolutions 239 (IX) and 277 (X), on trade-union rights; by resolutions 304 G (XI) and 547 L (XVIII), on educational opportunities for women; by resolution 445 D (XIV), on vocational and technical education for women; by resolution 445 F (XIV), on part-time work for women; by resolution 445 G (XIV), on older women workers; by resolution 522 E (XVII), on independence of information personnel; by resolution 545 C (XVIII), on discrimination in employment and occupation;

(b) To the United Nations Educational, Scientific and Cultural Organization (UNESCO), by resolution 48 (IV), on political rights for women; by resolutions 116 B (VI), 443 (XIV) and 545 E (XVIII), on prevention of discrimination and protection of minorities; by resolution 303 G (XI), on discrimination in education; by resolutions 374 (XIII) and 522 L (XVII), on production and distribution of newsprint; by resolution 385 C (XIII), on political education for women; by resolution 547 K (XVIII), on educational opportunities for women;

(c) To the World Health Organization (WHO), by resolution 242 F (IX), on training facilities for the nursing profession; and by resolutions 353 (XII) and 386 (XIII), on the health aspect of the problem of the plight of survivors of concentration camps;

(d) To the International Refugee Organization (IRO), by resolution 353 (XII), on the problem of the plight of survivors of concentration camps;

(e) To the Food and Agriculture Organization of the United Nations (FAO), by resolutions 374 (XIII) and 522 (XVII), on production and distribution of newsprint;

(f) To the International Bank for Reconstruction and Development (the Bank), by resolution 374 (XIII), on production and distribution of newsprint;

(g) To the International Telecommunication Union (ITU), by resolution 522 H (XVII), on international broadcasting; and by resolution 522 L (XVII), on production and distribution of newsprint;

(h) To the specialized agencies in general, on various subjects within the field of human rights, for instance, by resolutions 374 (XIII), 386 (XIII), 475 (XV), 501 C (XVI), 502 D and H (XVI), 504 H (XVI), 522 K (XVII), 525 A (XVII) and 545 C and E (XVIII).

12. Finally, the Council has made recommendations to non-governmental bodies. Most of these recommendations have contained no indication of the status of the body addressed. Thus, in some cases, recommendations have been addressed to "the competent

2/ E S C resolution 351 (XII) requested the Secretary-General to bring certain matters to the attention of "the competent authorities of Japan".

3/ E S C resolution 444 (XIV) requested the Secretary-General to bring certain matters to the attention of "the Allied Military Government of Trieste".

4/ E S C resolution 474 E (XV) requested the Secretary-General to bring certain matters to the attention of "the competent authorities of the Saar".

5/ E S C resolutions 353 (XII) and 386 (XIII) were addressed respectively to "the competent German authorities" and "the German authorities concerned".

non-governmental organizations", as by resolution 475 (XV); in others to "non-governmental organizations active in the field of eradicating prejudice and discrimination, or having as their objective the promotion of social progress generally", as by resolution 502 C (XVI); to "interested non-governmental organizations" on the problem of discrimination in education, as by resolution 502 H (XVI); to "voluntary agencies", without any further specification, recommending that they assist the Government of the Federal Republic of Germany in investigating individual cases of survivors of Nazi concentration camps victims of so-called scientific experiments not residing within its territory, as by resolution 386 (XIII); to "voluntary agencies distributing [reparation] funds" to those victims, as by resolution 353 (XII); to "world Press, radio, film and other information agencies", as by resolution 154 E (VII). In only one case has the Council specified that its recommendation was addressed to "non-governmental organizations in Category A concerned", by resolution 121 (VI).

B. Studies and reports

13. While Article 62 (1) provides that the Economic and Social Council may make or initiate studies and reports with respect to economic, social and related matters, Article 62 (2) does not specifically authorize the Council to make or to initiate studies and reports in the field of human rights. In practice, the Council has made or initiated studies and reports on freedom of information, status of women, slavery and servitude, forced labour, prevention of discrimination, protection of minorities, et cetera.

14. The Council has established commissions and sub-commissions for the purposes of making studies or reports; it has appointed *ad hoc* bodies and rapporteurs and has requested specialized agencies and the Secretary-General to make studies and reports.

15. By resolution 1/5, for instance, the Council requested the Commission on Human Rights to make reports concerning an international bill of rights and international declarations on civil liberties and similar matters; and by resolution 2/11 it requested the Commission on the Status of Women to make reports on promoting women's rights in political, economic, social and educational fields. By resolution 502 H (XVI) it authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to make a study on discrimination in education and by resolution 197 (VIII) it empowered the Sub-Commission on Freedom of Information and of the Press to study and make reports on a number of specific aspects of freedom of information.

16. By resolution 238 (IX) the Council instructed the Secretary-General to appoint an *ad hoc* committee to survey the field of slavery and other institutions resembling slavery. By resolution 350 (XII) it decided to establish an *ad hoc* committee on forced labour, to be appointed jointly by the Secretary-General and the Director-General of ILO, to study the nature and extent of the problems raised by the existence in the world of certain systems of forced labour.

17. By resolution 442 C (XIV) the Council appointed a rapporteur to prepare a substantive report covering major contemporary problems and developments in the field of freedom of information and by resolution 525 A (XVII) it appointed a rapporteur to prepare a concise summary of information concerning slavery and practices resembling slavery.

18. The Council has called upon specialized agencies to make studies and reports in the field of human rights. By resolution 545 C (XVI), for example, it invited ILO to undertake a study of discrimination in the field of employment and occupation; and by resolution 522 G (XVII) it requested ITU and UNESCO to prepare a joint study on the problems of transmitting press messages. Occasionally, the Council has called upon the specialized agencies without designating the particular agencies which were to undertake

the study in question; thus, for instance, by resolution 525 A (XVII) it invited "the specialized agencies, in the fields with which they are concerned" to study measures to remedy slavery, conditions similar to slavery, and servitude in all its forms.

19. The Council has also very often requested the Secretary-General to make studies or reports. For example, the Council requested the Secretary-General, by resolution 9/2, to compile a year-book on law and usage relating to human rights; by resolution 46 (IV), to prepare an outline concerning an international bill of human rights; by resolution 242 C (IX), to prepare an analysis of the conflicts of laws in the field of nationality of married women; and by resolution 522 A (XVII), to prepare the following: a concrete programme of action to promote among news personnel everywhere a wider knowledge of the work of the United Nations, of foreign countries and of international affairs; a world-wide study of current principles and practices involved in the censorship of outgoing news dispatches; a study of the legal aspects of the rights and responsibilities of the media of information; a study of the problem of the protection of sources of information of news personnel; and a study of public and private information monopolies and their effects on freedom of information.

20. It may be noted that in many cases a combination of methods has been utilized by the Council, such as the preparation of studies and reports by its subsidiary organs, by the Secretary-General and by the specialized agencies acting jointly, sometimes "in consultation", "in conjunction", or "in collaboration with" or "with the assistance of", Governments or non-governmental organizations. In some instances the Council has specified that the study or report was merely to be communicated to non-governmental organizations or to Governments for comments and observations.

C. Procedures for the handling of communications concerning human rights

21. The Council has also adopted procedures for the handling of communications concerning human rights in general and trade-union rights in particular; by resolution 239 (IX) the Council requested ILO to establish, on behalf of the United Nations and on its own behalf, a Fact-Finding and Conciliation Commission on Freedom of Association; and by resolution 277 (X) the Council accepted on behalf of the United Nations the services of that Commission, when established. 6/

II. ANALYTICAL SUMMARY OF PRACTICE

22. Under Article 62 (2) the Economic and Social Council may make recommendations for the promotion of human rights and fundamental freedoms. The Council has made recommendations to the General Assembly, to the Members of the United Nations and to the specialized agencies on matters relating to human rights under Article 62 (2), and on economic, social and related matters under Article 62 (1); and has made or initiated studies and reports in the field of human rights under Article 62 (2), and in the economic, social and related fields under Article 62 (1).

23. A number of specific questions have arisen in the application and interpretation of Article 62 (2). They are discussed below under the following headings:

A. The competence of the Economic and Social Council to make recommendations to non-member States;

B. The competence of the Economic and Social Council to make recommendations to the Trusteeship Council;

C. The power of the Economic and Social Council to conduct inquiries or investigations in matters relating to human rights;

6/ See paras. 69-74, below.

D. The power of the Economic and Social Council to evaluate allegations of violations of human rights and to make recommendations thereon;

E. Questions relating to the procedure for dealing with communications concerning human rights;

F. Questions relating to the procedure for dealing with allegations regarding infringements of trade-union rights;

G. Human rights and domestic jurisdiction.

A. The competence of the Economic and Social Council to make recommendations to non-member States

24. The Economic and Social Council has made recommendations to non-member States severally or individually. The question of its competence to address recommendations to non-member States, however, has been raised on occasion in the Council, for instance in the matter of trade-union rights.

25. At the twelfth session of the Council, communications containing allegations of infringements of trade-union rights in Japan, Spain and Romania were received. During the discussion ^{7/} it was questioned whether the Council was competent to consider such communications affecting States which were Members neither of the United Nations nor of ILO, since Council resolution 277 (X) on trade-union rights contained no specific provision to that effect. ^{8/} On the other hand, the opinion was expressed that "the Council would be failing in its duty if it merely rejected communications relating to [such] countries, since it was called upon to deal with all cases of oppression of the workers". It was recalled, in this connexion, that the United Nations had already dealt with matters affecting non-member States, such as allegations regarding infringements of human rights in Hungary, Romania and Bulgaria. As regards Spain, the question was also raised whether, in consequence of General Assembly resolution 39 (I), the Council could address a recommendation to that country. At the conclusion of the discussion the Council decided, by resolution 351 (XII), to bring the allegations as well as the provisions of resolution 277 (X) to the attention of the States concerned, and to ask them to submit their observations thereon.

26. At the sixteenth session, the competence of the Council to address recommendations to non-member States was again challenged in the course of the debate on a draft resolution concerning infringements of trade-union rights. As noted in the Summary Record, it was argued ^{9/} that:

"it was clearly stated in Article 62 [paragraph 1] of the Charter that the Council could make recommendations to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned. Consequently the Council was not empowered to make recommendations to non-member States. Furthermore, it was clear from Article 2, paragraph 6, of the Charter that the United Nations was intended to deal with non-member States only so far as might be necessary for the maintenance of international peace and security, and that, in any event, was not the province of the Economic and Social Council."

27. On the other hand, the opinion was expressed that, while it could be agreed that according to Article 62 (1) the Council was not empowered to make recommendations to non-member States, ^{10/} that Article governed only the questions specifically listed in it. However, as reported in the Summary Record, it was further stated that:

^{7/} E S C (XII), 446th and 448th mtgs.

^{8/} See paras. 69-74, below.

^{9/} For texts of relevant statements, see E S C (XVI), 720th and 722nd mtgs.

^{10/} As to this contention, see in this Repertory under Article 62 (1).

"there was a separate paragraph [paragraph 2] stating that the Council could 'make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all'. The drafters of the Charter had drawn a distinction between the subjects on which the Council could make recommendations to States Members alone and the question of human rights [including freedom of association], on which there was no such restriction. Thus, by virtue of paragraph 2 of Article 62, it was the Council's duty to take action on allegations regarding infringements of trade union rights no matter whether or not the State in which such infringements occurred was a Member of the United Nations."

28. Following this discussion the Council, by resolution 503 (XVI), requested the Secretary-General to transmit the allegations referred to above "to the governments concerned".

B. The competence of the Economic and Social Council to make recommendations to the Trusteeship Council

29. The Economic and Social Council has made recommendations to the Trusteeship Council concerning the observance of human rights and the status of women in Trust Territories.

30. At its tenth session, the question was raised whether the Economic and Social Council should make a recommendation to the Trusteeship Council concerning visiting missions to Trust Territories.

31. At that session, the Social Committee of the Council had before it a draft resolution 11/ recommended by the Commission on Human Rights, which proposed that the Council request the Trusteeship Council to authorize the Sub-Commission on Prevention of Discrimination and Protection of Minorities to participate in visits to Trust Territories with a view to the preparation of measures to extend the full enjoyment of human rights and fundamental freedoms to non-self-governing populations.

32. The draft resolution was rejected by the Committee. During the discussion, 12/ some representatives questioned the competence of the Council to make the recommendation envisaged in the draft resolution. It was argued that the Trusteeship Council alone was responsible for the supervision of the Administering Authorities, and that, although the Trusteeship Council was entitled under Article 91 to appeal to the Economic and Social Council and to the specialized agencies for assistance, it had to take the initiative. For the Economic and Social Council to request the Trusteeship Council to include in its visiting missions members of the Sub-Commission would seem to imply that the Trusteeship Council was failing in its duty and would show an unjustified lack of confidence in the Trusteeship Council. Other representatives, however, maintained that the Economic and Social Council was fully competent to make the recommendation envisaged, and some representatives expressed the view that the Economic and Social Council was concerned with the protection of human rights throughout the world.

33. At its thirteenth session, the Economic and Social Council invited, by resolution 385 E (XIII), Member States to nominate, and the Trusteeship Council to consider appointing, women to serve as members of visiting missions.

11/ E S C (IX), Suppl. No. 10 (E/1371), annex 4, draft resolution B, II.

12/ E/AC.7/SR.119.

C. The power of the Economic and Social Council to conduct inquiries or investigations in matters relating to human rights

34. That the Economic and Social Council may initiate or make studies and reports in the field of human rights has not been challenged. Questions have arisen, however, as to whether, to what extent and under what conditions the Council might conduct direct inquiries or field investigations in matters relating to human rights. These questions were discussed, 13/ for instance, in connexion with problems of refugees and displaced persons, of forced labour and of trade-union rights.

1. *Refugees and displaced persons*

35. At its first session, the Council established a Special Committee on Refugees and Displaced Persons 14/ "to carry out promptly a thorough examination in all its aspects of the problem of refugees and displaced persons of all categories". The Committee was authorized to establish such sub-committees as might be necessary for all aspects of its work, "including the carrying out of investigations or field trips". It was also given "the right to take evidence from or consult with such persons or bodies as it deems appropriate".

36. In the course of discussion a suggestion 15/ was made that the Committee should have the consent of the Governments of the respective countries concerned before evidence could be taken from individuals or bodies within the territory of those Governments. On the other hand, it was stated that the Committee would require great latitude to examine the whole problem before it.

37. At its second session, the Council rejected a draft resolution, 16/ by which it would have set up a fact-finding committee to collect information, in places of temporary location of refugees and displaced persons, from authorities in charge of such refugees and directly from displaced persons. The sponsor of the draft resolution stated 17/ that the Council had authority, under the Charter, to set up a fact-finding committee. The objections of those opposing the draft resolution were of a practical rather than a constitutional order.

2. *Forced labour*

38. By resolution 195 (VIII) the Council requested the Secretary-General to approach all Governments and to inquire in what manner and measure they would be prepared to co-operate in an impartial inquiry into the extent of forced labour in their countries. Pursuant to this resolution, the Secretary-General approached Governments of Member and non-member States. The replies 18/ received indicated that some Governments were prepared to co-operate unconditionally, while others were prepared to co-operate under certain conditions.

39. At its ninth session, the Council had before it two draft resolutions on this subject. In one draft resolution 19/ it was proposed that the Council should establish an impartial commission of inquiry on forced labour which would be authorized to request that "States facilitate its inquiries into alleged practices of forced labour" and "to take testimony and hold public hearings, with opportunities for reply,

13/ See also paras. 73-76, below.

14/ E S C resolution 1/3.

15/ E S C (I), 12th mtg., pp. 102 and 103.

16/ E/70.

17/ E S C (II), 15th mtg., pp. 121, 122 and 127-130.

18/ E S C (IX), Annex, pp. 158-168, E/1419.

19/ Ibid., pp. 168 and 169, E/1484.

under such rules as it shall itself decide". In the other draft resolution 20/ it was proposed that the Council should establish a "comprehensive international commission consisting of representatives of the manual and intellectual workers" for the purpose "of a comprehensive and objective investigation of the real working conditions of workers and employees" in all countries and territories.

40. In the course of discussion 21/ it was pointed out that the success of a commission of inquiry would depend on obtaining the permission of Governments to make inquiries in the areas over which their jurisdiction extended. If such permission were refused, it was unthinkable that the United Nations should acknowledge itself powerless. An amendment 22/ to the first draft resolution before the Council was submitted, providing that:

"In cases where it appears impossible to obtain adequate co-operation from the State in whose territory the existence of forced labour has been alleged, the Commission shall be authorized to pursue its inquiries outside the frontiers of the country concerned, provided it can be shown that clear and adequate data and evidence are available."

Furthermore, to provide against the possibility that a State which refused to allow any inquiry to be made on its own territory would be at liberty to level accusations against others, the amendment provided that:

"The Commission shall initiate its inquiries, either on its own initiative or on charges being laid by any Member State, provided that such Member State has unequivocally declared its readiness to accept and facilitate any investigations which might be required within its own territory."

The opinion was expressed that the question of inquiries on the spot was the core of the whole problem, and that inquiries should either be held everywhere or not at all. The existence of forced labour, it was said, infringed both the letter and the spirit of the Charter and of the Universal Declaration of Human Rights, and Article 2 (7) could not be invoked in that field.

41. The Council did not set up any commission of inquiry at its ninth session. However, it adopted resolution 237 (IX), by which the Council requested "Governments which have not as yet stated that they would be prepared to co-operate in such an impartial enquiry to consider whether they can give a reply to that effect before the next session of the Council".

42. At its twelfth session, the Council adopted resolution 350 (XII) by which an Ad Hoc Committee on Forced Labour was established to study the nature and extent of the problem raised by the existence in the world of systems of forced or "corrective" labour. The Committee was authorized to examine the texts of laws and regulations and to take evidence relating to forced labour.

3. Trade-union rights

43. At the eighth session of the Council, a draft resolution 23/ was introduced by which the Council would have noted that measures taken in a number of countries violated the Charter and trade-union rights. In the course of the discussion 24/ the

20/ Ibid., pp. 171-174, E/1485.

21/ E S C (IX), 319th, 321st and 324th mtgs.

22/ E S C (IX), Annex, p. 175, E/1488.

23/ E S C (VIII), Annex, p. 33, E/1224.

24/ E S C (VIII), 252nd, 256th and 264th - 266th mtgs.

opinion was expressed that it was not part of the work of the Council to investigate measures taken by Member States for the preservation of law and order in their territories. Article 62, which authorized the Council "to make or initiate studies", did not give that body the right to make investigations. It was also contended that the United Nations had no right, given the provisions of Article 2 (7), to interfere in the internal affairs of States. On the other hand, it was argued that the Council should set up an *ad hoc* body to investigate to what extent trade-union rights were being respected in the countries concerned. 25/

D. The power of the Economic and Social Council to evaluate allegations of violations of human rights and to make recommendations thereon

44. The question whether the Economic and Social Council has the power to evaluate allegations or reports concerning violations of human rights in individual States or territories has been a subject of discussion on many occasions. It was raised when the Council discussed human rights in Palestine, freedom of information, trade-union rights in thirteen countries and in Trieste, and the existence of forced labour in certain countries.

1. *Human rights in Palestine*

45. By resolution 133 (VI) the Council requested its Committee on Arrangements for Consultation with Non-Governmental Organizations (NGO Committee) to submit recommendations concerning a communication on "the situation of Jewish population in Palestine" 26/ presented by the World Jewish Congress. The Committee recommended a draft resolution, 27/ by the second paragraph of which the Council would "decide that it has at the present time no competence to judge and hence to recommend any useful action on the statement by the World Jewish Congress".

46. In the discussion in the Committee, 28/ it was pointed out that neither the Council nor the Committee had the competence of an international court, and that as yet neither possessed judicial or other powers to settle any human rights dispute. However, the Committee could make recommendations to the Council directed towards the promotion of human rights under the terms of existing constitutional provisions. A suggestion was also made that the matter was solely within the competence of the Commission on Human Rights. The Committee agreed that the original proposal of the non-governmental organization to investigate the incidents alleged would involve judicial functions of the type on which the Council "had already cited its incompetence in a resolution at its sixth session". 29/ It was also agreed that for the Council to establish an investigating body or to act as a judicial organ would prejudice the question of implementation of human rights, and that, until such machinery was created, the Council was not competent to deal with this or other similar questions. However, it was also argued that the Committee had the right to determine whether human rights had been violated and to make specific recommendations to the Council thereon. The view was also expressed that under Articles 62 (2) and 2 (7) the matter under discussion was not within the competence of any organ of the United Nations.

47. During the discussion 30/ in the Council an amendment was submitted to replace the second paragraph of the draft resolution by a clause under which the Council would

25/ For the decisions, see paras. 51-54 below.

26/ E/710.

27/ E/940, p. 3, part I.

28/ E/940, p. 4, annex I.

29/ Resolution 111 (VI) appears to have been meant.

30/ E S C (VIII), 235th and 239th mtgs.

decide that it "should not at this stage examine the merits of the complaints included in the communication of the World Jewish Congress." In favour of this amendment it was stated that it was not possible to accept the wording of the paragraph to be amended with its suggestion that the Council had no competence in the matter, even though that suggestion was limited by the expression "at the present time". The Council had specifically been given competence to deal with such questions as the prevention of discrimination and the protection of minorities and all problems falling within the field of human rights. Although the Council then had no machinery for dealing with problems of minorities, that did not mean that it was not competent to do so. The Declaration of Human Rights had already been adopted and it was hoped that the Covenant and the Measures of Implementation would soon be completed. As soon as the machinery became available the Council could take action on such problems. While agreeing that the question of competence of the Council should not be raised and that no precedent on that point should be established, some representatives emphasized that there was no way in which the Council could act at the time and proposed that the situation be met by simply deleting the second paragraph of the text recommended by the Committee. The Council decided to delete that paragraph of the draft resolution.

48. The Committee's draft was further amended to include a provision for the transmittal of the relevant records to the Security Council in order to give to that organ, which was then considering the Palestine question, an account of the decision taken by the Economic and Social Council. The resolution, as adopted, 31/ read as follows:

"The Economic and Social Council,

"Takes note of the report of the Council NGO Committee prepared in response to Council resolution 133 H (VI) of 11 March 1948 regarding communications from the World Jewish Congress;

"Notes that the unsettled conditions in Palestine may have affected the observance of fundamental human rights in Palestine and some other areas;

"Expresses the hope that Governments and authorities concerned will not cease to exert whatever efforts are necessary to safeguard the fundamental human rights of individuals and groups of different faiths; and

"Requests the Secretary-General to transmit the records to the Security Council." 32/

2. Freedom of information

49. A draft resolution recommended by the Sub-Commission on Freedom of Information and of the Press, 33/ contained the following considerandum:

"Considering that the duly authorized radio operating agencies in the USSR are deliberately interfering with the reception by the people of the USSR of certain radio signals originating beyond the territory of the USSR."

50. In discussion in the Social Committee 34/ it was maintained by some representatives that mention of the name of a specific Member Government would not help to correct an

31/ E S C resolution 214 B (VIII).

32/ See also in this Repertory under Article 65.

33/ E S C (XI), Suppl. No. 5 A (E/1672), pp. 2-4.

34/ See E/AC.7/SR.136.

objectionable practice and that a direct accusation would constitute a dangerous precedent for the Council to adopt. Moreover, it would be unreasonable to pass an ex parte judgement in the absence of the representative of the country concerned. On the other hand, it was pointed out that the Council had previously rejected the position that particular countries could not, under Article 62, be referred to in Council resolutions, and it was also stated that resolutions couched in general terms would be unfair to countries not involved. The considerandum was amended and adopted in the form quoted below as part of resolution 306 (XI), section B.

"Considering that the duly authorized radio operating agencies in some countries are deliberately interfering with the reception by the people of those countries of certain radio signals originating beyond their territories,

"The Economic and Social Council

"Declares this type of interference to be a violation of the accepted principles of freedom of information; condemns all measures of this nature as a denial of the right of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers".

3. *Trade-union rights in particular countries*

51. At its eighth session, the Council considered an item submitted for inclusion in its agenda by a non-governmental organization in category A having consultative status, concerning infringements of trade-union rights. It had before it documentation from two non-governmental organizations in category A having consultative status alleging violations of trade-union rights in certain Member and non-member States.

52. The Council, by resolution 194 (VIII), drew the attention "of all Member States to the importance of ensuring within their respective territories the full exercise of trade union rights and in particular to the principles contained" in the Freedom of Association and Protection of the Right to Organize Convention, 1948, adopted by ILO. It rejected 35/ a draft resolution 36/ which contained the following paragraphs:

"The Economic and Social Council,

".....

"Notes that legislative, administrative and other measures taken in Argentina, Brazil, Burma, Chile, Cuba, Egypt, Greece, India, Iran, Lebanon, Portugal, Spain and the Union of South Africa violate the Charter of the United Nations and, more particularly, the principles laid down in resolution 84 (V) of the Economic and Social Council and resolution 128 (II) of the General Assembly;

"Recommends those of the above-mentioned States which are Members of the United Nations to take effective measures at the earliest possible date to implement the principles governing trade-union rights proclaimed by the organs of the United Nations;

"Recommends those States, in accordance with Article 64 of the Charter, to submit to the ninth session of the Economic and Social Council a report on the measures taken by them in fulfilment of the present resolution."

35/ E S C (VIII), 266th mtg., p. 504.

36/ E S C (VIII), Annex, p. 33, E/1224.

53. During the discussion 37/ on this draft resolution, the view was expressed that the Council had no juridical functions and was not a judicial tribunal to hear and pass judgements. According to the Charter, the Council was an organ of international co-operation, and its duty was to encourage the solution of economic and social problems at the international level, although it had no power to enforce any solution. It could not, therefore, act to redress wrongs. The Council was not competent to decide on the accusations brought before it. It was also contended that the United Nations had no right, given the provisions of Article 2 (7), to interfere in the internal affairs of States. Moreover, while Article 62 (2) certainly gave the Council the power to make recommendations for the purpose of promoting human rights, such recommendations should be of a general nature.

54. On the other hand, it was pointed out that the Council had often dealt with questions affecting individual countries, for example, the question of traffic on the River Danube and the question of the Yugoslav gold reserve, and that it was a body called upon to make recommendations to any Member States of the United Nations for the defence of human rights and fundamental freedoms. Another view expressed was that, while the Council had no judicial powers, it could examine the accusations brought before it.

4. Trade-union rights in Trieste

55. In resolution 444 (XIV) the Council requested the Secretary-General to bring to the attention of the Allied Military Government of Trieste certain allegations regarding infringements of trade-union rights in Trieste, as well as the provisions of Council resolution 277 (X), and to invite that Government to submit its observations on the matter. At its fifteenth session 38/ the Council adopted resolution 474 D (XV), which read as follows:

"The Economic and Social Council,

"Taking note of the observations of the Allied Military Government of Trieste on the allegation contained in document E/2514/Add.20 in response to the invitation extended by the Secretary-General in accordance with resolution 444 (XIV),

"Observing that no question of trade-union rights was involved,

"Dismisses the allegation as not meriting further examination."

The Council had previously rejected a proposal to delete the whole of the draft resolution and it had also rejected an amendment which would have replaced the last paragraph by the following: "Considers that the allegation is not within its competence to examine."

56. During the discussion in the Council the opinion was expressed that, since the Allied Military Government of Trieste had submitted a reply disposing of the allegation relating to it, no action appeared to be necessary. In favour of the deletion of the draft resolution, the view was submitted that the text involved a decision on the substance of a complaint and that there was no reason for the Council to take any decision on the question. The representatives who supported the amendment contended that the action envisaged in the proposal was not within the competence of the Council, and that without the amendment the resolution would create a dangerous precedent.

37/ E S C (VIII), 252nd, 256th and 264th-266th mtgs.

38/ E S C (XV), 679th and 680th mtgs.

5. *Forced labour*

57. The Council considered the report 39/ of the Ad Hoc Committee on Forced Labour at its seventeenth session. In its report, the Ad Hoc Committee had concluded that "a system of forced labour as a means of political coercion was found by the Committee to be established in certain countries, to be probably in existence in several other countries, and to be possible of establishment in others"; and that "systems of forced labour for economic purposes" were found to exist in some Non-Self-Governing Territories as well as in some self-governing countries. Having considered the report of the Ad Hoc Committee, the Council adopted resolution 524 (XVII), operative paragraph 5 of which reads:

"The Economic and Social Council,

".....

"Condemns systems of forced labour which are employed as a means of political coercion or punishment for holding or expressing political views, and which are on such a scale as to constitute an important element in the economy of a given country."

E. Questions relating to the procedure for dealing with communications concerning human rights

58. The Economic and Social Council has adopted a general procedure for dealing with communications concerning human rights under resolution 75 (V), and a special procedure for dealing with allegations regarding infringements of trade-union rights under resolution 277 (X).

59. Council resolution 75 (V), as amended by resolutions 116 A (VI), 192 A (VIII) and 275 B (X), reads:

"The Economic and Social Council,

"Having considered chapter V of the report of the first session of the Commission on Human Rights concerning communications (document E/259),

"Approves the statement that 'the Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights';

"Requests the Secretary-General:

(a) To compile and distribute to members of the Commission on Human Rights, before each session, a non-confidential list containing a brief indication of the substance of each communication, however addressed, which deals with the principles involved in the promotion of universal respect for and observance of human rights and to divulge the identity of the authors of such communications unless they indicate that they wish their names to remain confidential;

39/ E S C (XVI), Suppl. No. 13 (E/2431).

(b) To compile before each session of the Commission a confidential list containing a brief indication of the substance of other communications concerning human rights, however addressed, and to furnish this list to members of the Commission, in private meeting, without divulging the identity of the authors of communications except in cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names being divulged;

(c) To enable the members of the Commission, upon request, to consult the originals of communications dealing with the principles involved in the promotion of universal respect for and observance of human rights;

(d) To inform the writers of all communications concerning human rights, however addressed, that their communications have been received and duly noted for consideration in accordance with the procedure laid down by the United Nations. Where necessary, the Secretary-General should indicate that the Commission has no power to take any action in regard to any complaint concerning human rights;

(e) In the future, to furnish each Member State concerned with a copy of any communication concerning human rights which refers explicitly to that State or to territories under its jurisdiction, without divulging the identity of the author, except as provided for in paragraph (b) above;

"Suggests to the Commission on Human Rights that it should at each session appoint an ad hoc committee to meet shortly before its next session for the purpose of reviewing the confidential list of communications prepared by the Secretary-General under paragraph (a) above and of recommending which of these communications, in original, should, in accordance with paragraph (c) above, be made available to members of the Commission on request."

60. The Council adopted a similar procedure for dealing with communications concerning the status of women under resolution 76 (V), as amended by resolution 30⁴ (XI).

61. It should be noted that communications from non-governmental organizations having consultative status have been dealt with under the regulations for consultation laid down by the Council pursuant to Article 71. ^{40/} However, at its fourteenth session the Council, by resolution ⁴⁵⁴ (XIV), took note of the report ^{41/} of the Committee on Non-Governmental Organizations concerning the procedure for the handling of communications received from non-governmental organizations in consultative status which contain complaints against Governments, and approved the conclusions contained therein, it being understood that the "other communications" referred to in the sixth paragraph of the report refer to communications on questions within the competence of the Council and the non-governmental organizations concerned.

62. Council resolution 75 (V) was adopted upon consideration of chapter V of the report ^{42/} of the first session of the Commission on Human Rights concerning communications, and approval of the statement that "the Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights".

^{40/} See also in this Repertory under Article 71.

^{41/} E/2770.

^{42/} E S C (IV), Suppl. No. 3 (E/259), p. 5, chap. V.

1. *The competence of the Council to deal with communications concerning human rights*

63. In the Social Committee ^{43/} of the Council a proposal was made to delete the chapter of the report of the Commission which contained the decision on communications concerning human rights. It was argued that the decision of the Commission was ~~unlawful~~ contrary to the Charter, under which the Council and its subsidiary organs could receive and consider communications from States, specialized agencies and non-governmental organizations having consultative status; and that any consideration of complaints of private individuals or groups against their Governments would constitute interference with the sovereign rights of States.

64. On the other hand, it was contended that the decision of the Commission to receive communications concerning human rights was not contrary to the Charter, for that decision had been governed by the statement that "the Commission recognizes that it has no power to take any action in regard to complaints concerning human rights". Attention was drawn to the opening phrase of the Preamble of the Charter and it was suggested that "the peoples of the United Nations" should have the right to have their communications received and considered by the United Nations.

65. The procedure for dealing with communications concerning human rights was subsequently discussed several times in the General Assembly, in the Economic and Social Council and in the Commission. Under resolution 542 (VI) the General Assembly invited the Council to give instructions to the Commission with regard to communications and to request the Commission to formulate recommendations thereon. At its eighth session the Commission decided ^{44/} not to reconsider Economic and Social Council resolution 75 (V), as amended, and, under resolution 441 (XIV) the Council likewise decided to take no action thereon. At its eighth session the General Assembly rejected a draft resolution ^{45/} on communications concerning human rights, by which the General Assembly would have decided that, pending the entry into force of the Covenants on Human Rights, the Commission on Human Rights should (1) transmit to Governments, for their comments, such communications received by the United Nations as, in the opinion of the Commission, contained allegations of violations of human rights serious enough to justify reference to the Governments concerned; and (2) transmit to the Economic and Social Council such communications, together with the replies or comments of Governments, as the Commission considered should be brought to the attention of the Council.

2. *Communications concerning human rights and relating to Trust Territories*

66. During the discussion in the Social Committee ^{46/} of the Council, which resulted in the adoption of Council resolution 75 (V), proposals were made to the effect that the Commission on Human Rights, or the Secretary-General, should forward communications concerning human rights, which related to Trust Territories, to the Trusteeship Council for appropriate action "with such comments within the Commission's terms of reference as may be deemed desirable". Opinions on these proposals were divided.

67. On the one hand, it was contended that the Commission was concerned with matters affecting human rights throughout the world, including Trust Territories. Even though communications relating to Trust Territories were to be dealt with by the

^{43/} See E/AC.7/SR.12.

^{44/} E S C (XIV), Suppl. No. 4 (E/2256), para. 295.

^{45/} G A (VIII), Annexes, a.1. 12, p. 3, A/C.3/L.368. For texts of relevant statements, see G A (VIII), 3rd Com., 521st and 522nd mtgs.

^{46/} E/AC.7/SR.12-14.

Trusteeship Council, the Commission should not be deprived of its right to examine such communications and to make appropriate recommendations. On the other hand, it was pointed out that Article 87 b covered the matter under consideration and that no action was therefore necessary. All communications concerning human rights and relating to Trust Territories should be forwarded to the Trusteeship Council without comment by the Commission, and the former could consult the Commission if it so desired. It was agreed, however, that the question should be referred to a joint committee which had been established by the two Councils.

68. Subsequently, the Trusteeship Council, at its second session, and the Economic and Social Council, at its eighth session, 47/ approved the following recommendation 48/ of the Joint Committee:

"It is recommended, as a matter of principle, that all petitions to organs of the United Nations (such as petitions of human rights or on the status of women) which emanate from, or relate to conditions in any Trust Territory should be dealt with by the Trusteeship Council in accordance with paragraph (b) of Article 87 of the Charter.

"In order that such petitions may be processed with the minimum delay, they should be communicated immediately to that part of the Secretariat of the United Nations assigned to the Trusteeship Council.

"It is recommended that the Trusteeship Council should then communicate to the appropriate commissions for such assistance as the Council may desire under Article 91 of the Charter, those parts of such petitions as relate to matters which are the commission's special concern. It is recommended also that the Trusteeship Council should communicate to the appropriate commissions those petitions which it may receive direct and which may contain matters of concern to them.

"It is further recommended that, when the Trusteeship Council comes to consider petitions concerning human rights or the status of women which may be referred to it in accordance with the procedure recommended above, the Trusteeship Council should give consideration to the extent to which the procedure for dealing with such petitions prescribed by the Economic and Social Council in its resolutions 75 (V) and 76 (V) of 5 August 1947 (E/505, E/521) can be followed.

"The right of the commissions concerned to take cognizance of petitions in accordance with the above-mentioned resolutions is recognized, and their comments thereon should be welcomed."

F. Questions relating to the procedure for dealing with allegations regarding infringements of trade-union rights

69. At its ninth session, the Economic and Social Council, by resolution 239 (IX), requested ILO to proceed, "on behalf of the United Nations" as well as "on its own behalf", with the establishment of a Fact-Finding and Conciliation Commission on Freedom of Association, which was referred to in a resolution of the 109th session of the Governing Body of the International Labour Office.

47/ See T C (II), 31st mtg., and E S C resolution 216 (VIII).

48/ E S C (V), annex 20 (E and T/C.1/2), pp. 483 and 484.

70. At its tenth session, the Council adopted resolution 277 (X), which read as follows:

"The Economic and Social Council

"Notes with approval the decision taken by the Governing Body of the International Labour Office at its one hundred and tenth session to establish a Fact-Finding and Conciliation Commission on Freedom of Association with the terms of reference set forth in the letter of 19 January 1950 from the Director-General of the International Labour Office to the Secretary-General of the United Nations;

"Considering that this action corresponds to the intent of Council resolution 239 (IX) and is likely to prove the most effective way of safeguarding trade-union rights,

"Decides:

"(a) To accept on behalf of the United Nations the services of the International Labour Organisation and the Fact-Finding and Conciliation Commission as established by the International Labour Organisation;

"(b) To forward to the Governing Body of the International Labour Office, for its consideration as to referral to the Commission, all allegations regarding infringements of trade-union rights received from Governments or trade-union or employers' organizations against member States of the International Labour Organisation;

"(c) (i) That, before acting on such allegations regarding any Member of the United Nations which is not a member of the International Labour Organisation, the Secretary-General, on behalf of the Council, will seek the consent of the Government concerned;

"(ii) That upon receiving such consent, the Council will transmit to the Fact-Finding and Conciliation Commission, through the Governing Body of the International Labour Office, any allegations regarding infringements of trade-union rights by Members of the United Nations which are not members of the International Labour Organisation, received from Governments or trade-union or employers' organizations, which it considers suitable for transmittal;

"(iii) That if such consent is not forthcoming, the Council will give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case;

"Requests the Secretary-General to bring allegations regarding infringements of trade-union rights received from Governments or trade-union or employers' organizations to the attention of the Council, notwithstanding the provisions of resolution 75 (V), as amended;

"Invites the International Labour Organisation:

"(a) To refer, in the first instance, to the Council any allegations regarding infringements of trade-union rights against a Member of the United Nations which is not a member of the International Labour Organisation;

"(b) To make suitable arrangements which would permit the Fact-Finding and Conciliation Commission of the International Labour Organisation to transmit to the Council any reports on cases regarding non-members of the International Labour Organisation;

"(c) To include in the annual report of the International Labour Organisation to the United Nations an account of the work of the Commission; and

"Recommends that the General Assembly refer allegations regarding trade-union rights to the Council for action in accordance with the procedures adopted by it as provided in this resolution."

71. At its fourteenth session the Council rejected a draft resolution, 49/ which read as follows:

"The Economic and Social Council,

"Considering that the reference to the International Labour Organisation of allegations regarding infringements of trade-union freedom addressed to the Economic and Social Council constitutes, on the Council's part, a dereliction of its duties in respect of the protection of trade-union freedom throughout the world;

"Decides to place all the allegations regarding infringement of trade-union freedom henceforward addressed to it on the agenda of each of its sessions."

72. At its fifteenth session, the Council, by resolution 474 A (XV) requested the Secretary-General, "acting on behalf of the Council, to forward to the Governing Body of the International Labour Office" all allegations relating to States members of ILO.

73. It may be noted that in practice the Council, under resolution 277 (X), has also dealt with allegations concerning countries neither Members of the United Nations nor of ILO.

74. During the discussions on allegations of infringements of trade-union rights, questions were raised regarding (1) the delegation of the responsibility of the Council to ILO, (2) the seeking of the consent of Governments and (3) allegations relating to Trust Territories.

1. Delegation of responsibility

75. Representatives opposed to having ILO act "on behalf of the United Nations" in dealing with allegations regarding infringements of trade-union rights advanced the following arguments: 50/ First, under Article 60, the responsibility for the promotion of respect for and observance of human rights was vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, and not in the specialized agencies. Second, Articles 62 (2) or 63 (1) could not be construed as authorizing the Council to transfer any of its powers to a specialized agency. Referral to ILO of allegations addressed to the Council would thus constitute, on the part of the Council, a dereliction of its duties. Finally, ILO could not act "on

49/ E S C (XIV), Annexes, a.i. 15 and 25, E/L.420.

50/ For texts of relevant statements, see E/AC.7/SR.108-112; E S C (IX), 317th and 318th mtgs.; E S C (XIV), 648th and 649th mtgs.

behalf of the United Nations", as the membership of the two organizations was not identical and as ILO was an agency not exclusively composed of representatives of Governments.

76. Representatives in favour of the proposed procedure 51/ were of the opinion that the expression "on behalf of the United Nations" was not intended to imply that the Council would abdicate its responsibility, but that the Council would avail itself of the assistance of a competent specialized agency. The procedure, it was argued, was in harmony with the letter and spirit of Articles 57 and 63 and of the agreement thereunder bringing ILO into relationship with the United Nations. As the Council was charged with extensive functions under the Charter, such as bringing about international co-operation in the promotion of human rights and of economic and social advancement, it could not, acting alone, perform all its functions. Furthermore, in requesting ILO to act "on behalf of the United Nations" in the matter of trade-union rights, the Council at all times reserved its right to review the matter, and invited ILO to include in its annual report an account of its work relating thereto.

2. *The consent of Governments* 52/

77. Under resolution 277 (X) the Economic and Social Council decided that the Secretary-General, on behalf of the Council, should seek the consent of the Government of a State Member of the United Nations but not a member of ILO, against which an allegation of infringement of trade-union rights had been made, before such allegation was referred to ILO. If such consent was not forthcoming, the Council would consider "appropriate alternative action".

78. There was a difference of opinion 53/ as to the necessity of seeking the consent of Governments. The provision, it was said on the one hand, would enable certain Governments to accuse other Governments and to bring the investigative machinery into operation, while they themselves would remain exempt from investigations by refusing their consent. It was pointed out that it had not been the practice of the General Assembly or of the Economic and Social Council to make their activities in the field of human rights dependent in particular cases upon the consent of individual Governments concerned. 54/

79. On the other hand, it was argued that there could be no effective investigation without the consent of the Government concerned; it was an essential prerequisite for the work of the Fact-Finding and Conciliation Commission. Moreover, it was to be hoped that Governments would not hesitate to give their consent whenever it was requested, lest a refusal be interpreted as an admission of weakness.

3. *Allegations relating to Trust Territories*

80. In accordance with Council resolution 277 (X), an allegation of infringements of trade-union rights relating to the French Cameroons was brought before the Council at its twelfth session. The Council adopted resolution 351 (XII), which read as follows:

"The Economic and Social Council

"...

51/ Ibid.

52/ See also II. C. above, on the power of the Council to conduct inquiries or investigations.

53/ See E/AC.7/SR.120-122.

54/ E S C (X), Annexes, a.i. 16, pp. 1-7, E/1566.

"Notes that the communication from the Union des Syndicats confédérés du Cameroun concerning France (E/1882, VII) is already before the Trusteeship Council and therefore requests the Secretary-General to report to the Economic and Social Council the action taken thereon by the Trusteeship Council with respect to the specific allegation regarding the infringement of trade-union rights in the Trust Territory of the Cameroons under French administration."

81. During the discussion 55/ preceding adoption of the resolution, some representatives observed that the proposal confirmed the agreement between the two Councils 56/ concerning the treatment of the communications in question. It was normal that the autonomy of the different organs of the United Nations be respected and, in any case, it was necessary to await the decision of the Trusteeship Council. However, it was contended on the other hand that the proposal did not go far enough and that it was not sufficient for the Economic and Social Council merely to be informed of the action taken by the Trusteeship Council, since it was for the Economic and Social Council to deal with infringements of trade-union rights wherever they took place.

82. The Secretary-General submitted a report 57/ to the Economic and Social Council at its thirteenth session, in pursuance of its resolution 351 (XII) on the action of the Trusteeship Council, whereupon the Economic and Social Council took no further action.

G. Human rights and domestic jurisdiction 58/

83. The question of the possible conflict between Articles 62 (2) and 2 (7) has been raised frequently in the course of the deliberations of the Council on matters of human rights. The question was discussed in connexion with the power of the Council to conduct inquiries or investigations 59/ or to pass judgements on violations of human rights, 60/ and in connexion with the procedures for dealing with communications concerning human rights 61/ and with allegations regarding infringements of trade-union rights. 62/

84. It may be of interest to cite one more illustration of the question in connexion with the problem of statelessness.

85. At the eleventh session of the Council, during the discussion 63/ of a draft resolution 64/ concerning the problem of statelessness, the view was expressed that to recommend to States "to re-examine their nationality laws was, in reality, to invade the innermost sanctum of sovereignty"; that "The problem of nationality was essentially a political one and affected the very life of the State"; that "it was difficult to imagine that, in order to comply with the Council's recommendation, a State would be able to alter its domestic laws and, in many cases, even its Constitution".

86. Representatives who opposed this view invoked the article of the Universal Declaration of Human Rights (article 15), which proclaimed that "everyone has the right

55/ E S C (XII), 443rd, 444th and 448th mtgs.

56/ See para. 64 above.

57/ E/2025/Add.1.

58/ For a comprehensive treatment of the question of domestic jurisdiction, see also in this Repertory under Article 2 (7).

59/ See paras. 40 and 43, above.

60/ See paras. 46, 49 and 50, above.

61/ See para. 60, above.

62/ See paras. 74-76, above.

63/ E S C (XI), 407th mtg.

64/ Adopted as E S C resolution 319 B, III (XI).

to a nationality", and pointed out that if the Council limited its activities to taking note of various articles of the Universal Declaration, it would not achieve very much.

87. At the twelfth session of the Council, it was again stated 65/ that the problem of statelessness should be solved through international action; it might be said that it was one of the cases in which national sovereignty should give way to inter-governmental co-operation. 66/

65/ E S C (XII), 467th mtg.

66/ With respect to the draft Protocol on the Status of Stateless Persons and the applicability of Article 2 (7), see in this Repertory under Article 62 (3).