

## ARTICLE 62 (2)

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## ARTICLE 62 (2)

### 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. The structure of this study is similar to the studies of Article 62, paragraph 2, in the *Repertory and its Supplements Nos. 1 to 4*. There was no new development requiring discussion under the headings A and B in the analytical summary of practice.

### I. GENERAL SURVEY

2. During the period under review, both the Economic and Social Council and the General Assembly, reaffirmed on several occasions the role of the Council as the central organ for comprehensive policy formulation and coordination of the activities of the United Nations system in the economic, social and human rights fields.<sup>1</sup> With respect to human rights, the Economic and Social Council reaffirmed in particular that the Council, in order to fulfil its responsibilities under Articles 55 and 56 of the Charter to promote universal respect for, and observance of, human rights and fundamental freedoms, should consider the reports of its functional bodies responsible in the field of human rights and, on that basis, should (a) make appropriate recommendations to the General Assembly in this field, and (b) examine and approve the work programmes of the United Nations in the field of human rights.<sup>2</sup>

#### A. Recommendations

3. During the period under review, the Economic and Social Council made many recommendations on a variety of subjects in the field of human rights.<sup>3</sup> Those subjects included matters relating to the status of women, the danger of a revival of nazism and racial intolerance, the World Conference for Action against Apartheid, the World Conference to Combat Racism and Racial Discrimination, the International Year of the Child, the programme of advisory services in the field of human rights, capital punishment, draft principles relating to equality in the administration of justice, the exploitation of labour through illicit and clandestine trafficking, the organization of the work of the Commission on Human Rights, the periodic reports on human rights and reports on freedom of information, question of the human rights of all persons subjected to any form of detention or imprisonment, social and institutional reform as a means of increasing domestic food production

and distributing it equitably among the population, and the punishment of war criminals and persons who have committed crimes against humanity.

4. As in the past, the Economic and Social Council has addressed recommendations to States and Governments: (a) in general terms, (b) more specifically to all States having legislation for the protection of indigenous populations,<sup>4</sup> Governments which control mass information media of world or continental scope,<sup>5</sup> the major trading partners of South Africa,<sup>6</sup> the colonial Powers,<sup>7</sup> States that contribute to the creation in southern Africa of a military-industrial complex whose aim is the suppression of the movement of peoples struggling for their self-determination and interference in the affairs of independent African States,<sup>8</sup> States where total emancipation of slaves and other persons of servile status has not yet taken place,<sup>9</sup> Governments of countries of refuge,<sup>10</sup> Governments of emigration and immigration countries,<sup>11</sup> developed and developing countries,<sup>12</sup> donor countries,<sup>13</sup> and (c) individually to several States. The Council has also addressed recommendations to its subsidiary organs: (a) to its functional commissions, such as the Commission on Human Rights<sup>14</sup> and its Sub-Commission on Prevention of Discrimination and Protection of Minorities,<sup>15</sup> the Commission on the Status of Women,<sup>16</sup> the Commission for Social Development<sup>17</sup> and the Statistical Commission;<sup>18</sup> (b)

<sup>4</sup>ESC resolution 1589 (L).

<sup>5</sup>ESC resolution 1590 (L).

<sup>6</sup>ESC resolution 1591 (L).

<sup>7</sup>ESC resolution 1592 (L).

<sup>8</sup>*Ibid.*

<sup>9</sup>ESC resolution 1695 (LII).

<sup>10</sup>*Ibid.*

<sup>11</sup>ESC resolution 1749 (LIV).

<sup>12</sup>ESC resolution 1808 (LV).

<sup>13</sup>ESC resolution 1969 (LIX).

<sup>14</sup>ESC resolution 1978/24.

<sup>15</sup>ESC resolution 1695 (LII).

<sup>16</sup>ESC resolution 1684 (LII).

<sup>17</sup>ESC resolution 1751 (LIV).

<sup>18</sup>ESC resolution 2061 (LXII).

<sup>1</sup>See, for example, ESC resolutions 1623 (LI) and 1768 (LIV) and GA resolutions 3341 (XXIX) of and 32/197.

<sup>2</sup>ESC resolution 1768 (LIV).

<sup>3</sup>See also this *Supplement*, under Article 55.

to its regional commissions;<sup>19</sup> (c) to its standing committees such as the Committee on Review and Appraisal,<sup>20</sup> the Committee on Crime Prevention and Control,<sup>21</sup> the Committee for Development Planning,<sup>22</sup> the Committee on Non-Governmental Organizations;<sup>23</sup> as well as (d) to ad hoc committees and Special Rapporteurs<sup>24</sup> of its subsidiary organs and expert meetings, such as the Ad Hoc Committee on Periodic Reports,<sup>25</sup> the Ad Hoc Working Group of Experts,<sup>26</sup> the Ad Hoc Working Group on the Situation of Human Rights in Chile<sup>27</sup> and an interregional meeting of experts on the role of women in development.<sup>28</sup> Recommendations were furthermore addressed generally to the United Nations and organizations, organs and agencies within the United Nations system as well as to various United Nations bodies, programmes, committees and organs, such as the General Assembly,<sup>29</sup> the Security Council,<sup>30</sup> the Secretary-General,<sup>31</sup> the United Nations Development Programme,<sup>32</sup> the Executive Board of the United Nations Children's Fund,<sup>33</sup> the President of the General Assembly and the President of the Economic and Social Council,<sup>34</sup> the United Nations High Commissioner for Refugees,<sup>35</sup> the United Nations Research Institute for Social Development,<sup>36</sup> the Special Committee against Apartheid,<sup>37</sup> the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,<sup>38</sup> the Consultative Committee on the Voluntary Fund for the United Nations Decade for Women,<sup>39</sup> the executive heads of the specialized agencies and other organizations within the United Nations System,<sup>40</sup> and the United Nations Children's Fund.<sup>41</sup> The Council also addressed itself to voluntary organizations,<sup>42</sup> all women throughout the world,<sup>43</sup> regional intergovernmental organizations,<sup>44</sup> all humanitarian organizations and the International Committee of the Red Cross,<sup>45</sup> the International Criminal Police Organization—Interpol,<sup>46</sup> the whole community, including trade unions,<sup>47</sup> national sports federations of Member States,<sup>48</sup> private organizations,<sup>49</sup> all transnational corpora-

tions and investment institutions<sup>50</sup> and non-governmental organizations.<sup>51</sup>

5. The recommendations made to States Members of the United Nations and/or members of the specialized agencies dealt with the subjects mentioned in paragraph 3 above.

6. Recommendations to the General Assembly included draft resolutions on matters such as the question of the punishment of war criminals and of persons who have committed crimes against humanity, containing principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,<sup>52</sup> the question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and Territories,<sup>53</sup> a programme of concerted international action for the advancement of women,<sup>54</sup> the danger of a revival of nazism and racial intolerance,<sup>55</sup> the implementation of United Nations resolutions relating to the right of peoples under colonial and alien domination to self-determination,<sup>56</sup> the employment of women in senior and other professional positions by the secretariats of organizations in the United Nations system,<sup>57</sup> the International Women's Year,<sup>58</sup> draft principles relating to equality in the administration of justice,<sup>59</sup> the implementation of the Decade for Action to Combat Racism and Racial Discrimination,<sup>60</sup> a World Conference to Combat Racism and Racial Discrimination<sup>61</sup> and the programme for and the establishment of a trust fund for Chile.<sup>62</sup> The Economic and Social Council furthermore submitted to the General Assembly draft resolutions adopted by the Committee on Crime Prevention and Control containing a code of conduct for law enforcement officials<sup>63</sup> and recommended to the General Assembly the adoption of guidelines for the improvement of the channels of communication between the United Nations and youth and youth organizations.<sup>64</sup> The Council also transmitted to the General Assembly for adoption a draft Declaration on the Rights of Mentally Retarded Persons<sup>65</sup> and a draft resolution containing a Declaration on the Protection of Women and Children in Emergency and Armed Conflict<sup>66</sup> as well as a preliminary draft International Convention on the Protection of Journalists Engaged in Dangerous Missions,<sup>67</sup> a draft Convention on the Suppression and Punishment of the Crime of Apartheid<sup>68</sup> and a draft Convention on the Elimination of Discrimination against Women.<sup>69</sup> Other recommendations to the General Assem-

<sup>19</sup>ESC resolution 1689 (LII).

<sup>20</sup>ESC resolution 1689 (LII).

<sup>21</sup>ESC resolution 1794 (LIV).

<sup>22</sup>ESC resolution 1855 (LVI).

<sup>23</sup>ESC resolution 1919 (LVIII).

<sup>24</sup>ESC resolution 1593 (L).

<sup>25</sup>ESC resolution 1693 (LII).

<sup>26</sup>ESC resolution 1796 (LIV).

<sup>27</sup>ESC resolution 1994 (LX).

<sup>28</sup>ESC resolution 1683 (LII) of 2 June 1972.

<sup>29</sup>See para. 6 below.

<sup>30</sup>ESC resolution 1591 (L).

<sup>31</sup>ESC resolution 1751 (LIV).

<sup>32</sup>ESC resolution 1808 (LV).

<sup>33</sup>ESC resolutions 1881 (LVII).

<sup>34</sup>ESC resolutions 2005 (LX) and 1978/38.

<sup>35</sup>ESC resolution 2011 (LXI).

<sup>36</sup>ESC resolution 2061 (LXII).

<sup>37</sup>ESC resolution 2087 (LXII).

<sup>38</sup>ESC resolution 2101 (LXIII).

<sup>39</sup>ESC resolution 1978/33.

<sup>40</sup>ESC resolution 1978/38.

<sup>41</sup>ESC resolution 1978/40.

<sup>42</sup>ESC resolution 1512 (XLVIII).

<sup>43</sup>ESC resolution 1515 (XLVIII).

<sup>44</sup>ESC resolution 1590 (L).

<sup>45</sup>ESC resolution 1591 (L).

<sup>46</sup>ESC resolution 1695 (LII).

<sup>47</sup>ESC resolution 1751 (LIV).

<sup>48</sup>ESC resolution 1938 A (LVIII).

<sup>49</sup>ESC resolution 1978/7.

<sup>50</sup>ESC resolution 1978/72.

<sup>51</sup>See para. 8 below.

<sup>52</sup>ESC resolutions 1500 (XLVIII) and 1791 (LIV).

<sup>53</sup>ESC resolution 1501 (XLVIII).

<sup>54</sup>ESC resolution 1511 (XLVIII).

<sup>55</sup>ESC resolution 1590 (L).

<sup>56</sup>ESC resolution 1592 (L).

<sup>57</sup>ESC resolutions 1676 (LII) and 1857 (LVI).

<sup>58</sup>ESC resolution 1681 (LII).

<sup>59</sup>ESC resolution 1785 (LIV).

<sup>60</sup>ESC resolutions 1938 A and B (LVIII) and 2056 (LXII).

<sup>61</sup>ESC resolution 1990 (LX).

<sup>62</sup>ESC resolution 1978/15.

<sup>63</sup>ESC resolution 2075 (LXII).

<sup>64</sup>ESC resolution 2078 (LXII).

<sup>65</sup>ESC resolution 1585 (L).

<sup>66</sup>ESC resolution 1861 (LVI).

<sup>67</sup>ESC resolutions 1597 (L) and 1690 (LII).

<sup>68</sup>ESC resolution 1784 (LIV).

<sup>69</sup>ESC resolution 2058 (LXII).

bly concerned, inter alia, the protection of women and children in emergency or wartime,<sup>70</sup> racial discrimination in the political, economic, social and cultural spheres,<sup>71</sup> policies of apartheid and racial discrimination,<sup>72</sup> the question of the establishment of an international university,<sup>73</sup> activities of the Ad Hoc Working Group of Experts on southern Africa and the report of that Ad Hoc Working Group of Experts,<sup>74</sup> the World Conference of the International Women's Year,<sup>75</sup> the World Conference to Combat Racism and Racial Discrimination,<sup>76</sup> the study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment,<sup>77</sup> the long-term programme of work of the Commission on Human Rights,<sup>78</sup> the International Year of the Child,<sup>79</sup> youth in the contemporary world, including guidelines for the improvement of the channels of communication between the United Nations and youth and youth organizations,<sup>80</sup> the Manila Communiqué of the World Food Council: A Programme of Action to Eradicate Hunger and Malnutrition,<sup>81</sup> further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission on Human Rights<sup>82</sup> and the World Plan of Action within the framework of the United Nations Decade for Women.<sup>83</sup>

7. Recommendations to the specialized agencies continued to be addressed either generally to all agencies or to specific agencies, individually or in combination with other addressees, mainly States and non-governmental organizations. The International Labour Organization was addressed on matters such as the repercussion of scientific and technological progress on the status of women workers,<sup>84</sup> allegations regarding infringements of trade union rights,<sup>85</sup> migrant workers,<sup>86</sup> the problem of mass poverty and unemployment in developing countries,<sup>87</sup> activities of ILO to promote the advancement of women and their integration in development,<sup>88</sup> as well as human rights and scientific and technological development.<sup>89</sup> The Council addressed UNESCO on topics such as the elimination of illiteracy among women,<sup>90</sup> activities of UNESCO of special interest to women<sup>91</sup> and the influence of mass communication media on attitudes towards the roles of women in present-day society.<sup>92</sup> FAO was addressed on the subject of women in development and international conferences.<sup>93</sup>

<sup>70</sup>ESC resolution 1515 (XLVIII).

<sup>71</sup>ESC resolution 1588 (L).

<sup>72</sup>ESC resolution 1591 (L).

<sup>73</sup>ESC resolution 1731 (LIII).

<sup>74</sup>ESC resolutions 1868 (LVI), 2082 B and C (LXII) and decision 232 (LXII).

<sup>75</sup>ESC resolution 1959 (LIX).

<sup>76</sup>ESC resolution 1990 (LX).

<sup>77</sup>ESC decision 145 (LX).

<sup>78</sup>ESC decision 146 (LX).

<sup>79</sup>ESC decision 178 (LXI).

<sup>80</sup>ESC resolution 2078 (LXII).

<sup>81</sup>ESC resolution 2114 (LXIII).

<sup>82</sup>ESC resolution 1978/19.

<sup>83</sup>ESC resolution 1978/27.

<sup>84</sup>ESC resolution 1513 (XLVIII).

<sup>85</sup>ESC resolutions 1599 (L) and 1796 (LIV).

<sup>86</sup>ESC resolution 1749 (LIV).

<sup>87</sup>ESC resolution 1808 (LV).

<sup>88</sup>ESC resolution 1859 (LVI).

<sup>89</sup>ESC resolution 2032 (LXI).

<sup>90</sup>ESC resolution 1512 (XLVIII).

<sup>91</sup>ESC resolution 1686 (LII).

<sup>92</sup>ESC resolutions 1862 (LVI) and 2063 (LXII).

<sup>93</sup>ESC resolution 1978/34.

ILO and UNESCO were addressed jointly on matters such as racial discrimination in the political, economic, social and cultural spheres<sup>94</sup> and the question of the realization of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and the study of special problems relating to human rights in developing countries.<sup>95</sup> UNIDO, FAO, UNESCO and WHO together with the competent bodies of the United Nations Conference on Trade and Development were addressed jointly on the occurrence of the Tripartite World Conference on Employment, Income Distribution, Social Progress and the International Division of Labour.<sup>96</sup> ILO, FAO and the World Bank together with the Secretary-General were addressed in connection with social and institutional reform as a means of increasing domestic food production and distributing it equitably among the population.<sup>97</sup> ILO, UNESCO, WHO jointly with UNICEF, UNDP and the interested non-governmental organizations were addressed on the topic of prevention of disability and rehabilitation of the disabled.<sup>98</sup>

8. In accordance with previous practice, the Economic and Social Council addressed non-governmental organizations in general, in most cases in combination with other addressees. At times the Council specifically addressed non-governmental organizations in consultative status or non-governmental organizations with a particular interest, competence or concern in a subject. Those recommendations concerned, for example, the elimination of illiteracy among women,<sup>99</sup> policies of apartheid and racial discrimination,<sup>100</sup> the participation of women in rural development programmes,<sup>101</sup> the protection of women and children in emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence,<sup>102</sup> the question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of apartheid and colonialism,<sup>103</sup> the contribution of non-governmental organizations to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,<sup>104</sup> the needs and aspirations of youth,<sup>105</sup> the activities of non-governmental organizations to combat racism and racial discrimination,<sup>106</sup> the study of discrimination in the matter of political rights and draft general principles on freedom and non-discrimination in the matter of political rights,<sup>107</sup> the study of discrimination in respect of the right of everyone to leave any country, including his or her own, and to return to that country, and draft principles on freedom and non-discrimination in respect of that right,<sup>108</sup> the International Women's Year,<sup>109</sup> the implementation of a programme of concerted international action to promote

<sup>94</sup>ESC resolution 1588 (L).

<sup>95</sup>ESC resolution 1689 (LII).

<sup>96</sup>ESC resolution 1968 (LIX).

<sup>97</sup>ESC resolution 2073 (LXII).

<sup>98</sup>ESC resolution 1921 (LVIII).

<sup>99</sup>ESC resolution 1512 (XLVIII).

<sup>100</sup>ESC resolution 1591 (L).

<sup>101</sup>ESC resolution 1678 (LII).

<sup>102</sup>ESC resolution 1687 (LII).

<sup>103</sup>ESC resolution 1695 (LII).

<sup>104</sup>ESC resolution 1740 (LIV).

<sup>105</sup>ESC resolution 1752 (LIV).

<sup>106</sup>ESC resolution 1782 (LIV).

<sup>107</sup>ESC resolution 1786 (LIV).

<sup>108</sup>ESC resolution 1788 (LIV).

<sup>109</sup>ESC resolution 1849 (LVI).

the advancement of women and their integration in development,<sup>110</sup> the study of situations that reveal a consistent pattern of gross violations of human rights: written and oral statements by non-governmental organizations in consultative status with the Economic and Social Council concerning human rights,<sup>111</sup> adoption and foster placement of children,<sup>112</sup> population, the status of women and the integration of women in development,<sup>113</sup> the question of the human rights of all persons subjected to any form of detention or imprisonment,<sup>114</sup> the influence of the mass communication media on attitudes towards the roles of women and men in present-day society,<sup>115</sup> the World Conference for Action against Apartheid,<sup>116</sup> the question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and Territories,<sup>117</sup> the World Conference to Combat Racism and Racial Discrimination,<sup>118</sup> the implementation of the Programme for the Decade for Action to Combat Racism and Racial Discrimination,<sup>119</sup> institutions responsible for implementing the World Plan of Action within the framework of the United Nations Decade for Women<sup>120</sup> and the effects of apartheid on the status of women.<sup>121</sup>

### B. Studies and reports

9. The system of periodic reports on human rights and reports on freedom of information<sup>122</sup> has been subject to various changes, including a new cycle of submission and recommendations on the outline and contents of those reports.<sup>123</sup> Member States have also been invited to include in their periodic reports any further change in the current situation in regard to capital punishment and safeguards thereto.<sup>124</sup> On the occasion of the entry into force of the International Covenant on Economic, Social and Cultural Rights, the Economic and Social Council decided to exempt States parties to the Covenant, which must submit reports under the Covenant, from submitting reports on similar questions under the periodic reporting system<sup>125</sup> and established, in accordance with its responsibility under article 17 of the Covenant, a special programme of biennial reports.<sup>126</sup> By its resolution 1978/20 of 5 May 1978, the Council also exempted States parties to the International Covenant on Civil and Political Rights from submitting reports on similar questions under the periodic reporting procedure.

10. A new biennial cycle of reporting with respect to the implementation of the Declaration on the Elimination of

Discrimination against Women was established under Economic and Social Council resolution 1677 (LII) of 2 June 1972. The General Assembly, on the recommendation of the Council,<sup>127</sup> decided,<sup>128</sup> in order to avoid overlapping with the reporting procedures laid down in General Assembly resolutions 3490 (XXX) of 12 December 1975 and 3520 (XXX) of 15 December 1975, to integrate the reporting systems outlined in the aforementioned resolutions into a single system and to review the new reporting system in the light of further developments.

11. The system of quadrennial reports to be submitted by non-governmental organizations in consultative status, originally set up under Economic and Social Council resolution 1296 (XLIV) of 23 May 1968, received an additional emphasis with regard to the observance of certain provisions relating to communications from non-governmental organizations containing complaints of alleged violations of human rights.<sup>129</sup>

12. The concern for the timeliness, length and contents of reports, studies and other documentation requested from the Secretary-General led to a number of measures, including the "32-pages rule"<sup>130</sup> and the "six weeks rule".<sup>131</sup>

13. In accordance with previous practice, requests for studies and reports were addressed in most cases to the Secretary-General. Further studies and reports as well as information for studies and reports were requested, both individually and in various combinations, from Member States, all States, Governments, subsidiary organs of the Economic and Social Council, specialized agencies, non-governmental organizations, various ad hoc and standing committees, UNDP, Special Rapporteurs and from the President of the Council.

14. Studies and reports requested during the period under review concerned, inter alia, the rights of the child,<sup>132</sup> war crimes and crimes against humanity,<sup>133</sup> the procedure for dealing with communications,<sup>134</sup> the rights of women,<sup>135</sup> the rights of indigenous peoples,<sup>136</sup> nazism and racial intolerance,<sup>137</sup> trade union rights,<sup>138</sup> the right of self-determination,<sup>139</sup> slavery and slave trade,<sup>140</sup> capital punishment,<sup>141</sup> migrant workers,<sup>142</sup> the aged and social security,<sup>143</sup> illicit and clandestine trafficking in labour,<sup>144</sup> the *Yearbook on Human Rights*,<sup>145</sup> social progress and development,<sup>146</sup> economic, social and cultural rights,<sup>147</sup> rights of

<sup>127</sup>ESC resolution 1978/28.

<sup>128</sup>GA resolution 33/186.

<sup>129</sup>ESC resolution 1919 (LVIII) and ESC decision 1978/16.

<sup>130</sup>See, for example, ESC resolutions 1623 (LI), 1894 (LVII) and ESC decision 65 (ORG-75).

<sup>131</sup>See, for example, ESC resolutions 1624 (LI) and 1770 (LIV) and ESC decision of 28 July 1972, 1837<sup>th</sup> mtg. (LIII), agenda item 16.

<sup>132</sup>ESC resolutions 1493 (XLVIII) and 1750 (LIV).

<sup>133</sup>ESC resolutions 1500 (XLVIII) and 1691 (LII).

<sup>134</sup>ESC resolution 1503 (XLVIII) and decisions 11 (LVI) and 86 (LVIII).

<sup>135</sup>ESC resolutions 1513 (XLVIII), 1514 (XLVIII), 1687 (LII) and 1978/33.

<sup>136</sup>ESC resolution 1589 (L).

<sup>137</sup>ESC resolution 1590 (L).

<sup>138</sup>ESC resolutions 1599 (L) and 1796 (LIV).

<sup>139</sup>ESC resolutions 1673 (LII), 1737 (LIV), 1865 (LVI) and 2120 (LXIII).

<sup>140</sup>ESC resolution 1695 (LII).

<sup>141</sup>ESC resolutions 1745 (LIV) and 1930 (LVIII).

<sup>142</sup>ESC resolutions 1749 (LIV), 1926 A and B (LVIII) and 2083 (LXII).

<sup>143</sup>ESC resolution 1751 (LIV).

<sup>144</sup>ESC resolution 1789 (LIV).

<sup>145</sup>ESC resolution 1793 (LIV).

<sup>146</sup>ESC resolutions 1841 (LVI) and 2069 (LXII).

<sup>147</sup>ESC resolutions 1867 (LVI) and 1988 (LX).

<sup>110</sup>ESC resolution 1855 (LVI).

<sup>111</sup>ESC resolution 1919 (LVIII).

<sup>112</sup>ESC resolution 1925 (LVIII).

<sup>113</sup>ESC resolution 1942 (LVIII).

<sup>114</sup>ESC resolution 1993 (LX).

<sup>115</sup>ESC resolution 2063 (LXII).

<sup>116</sup>ESC resolution 2087 (LXII).

<sup>117</sup>ESC decision 230 (LXII).

<sup>118</sup>ESC resolution 1978/3.

<sup>119</sup>ESC resolution 1978/7.

<sup>120</sup>ESC resolution 1978/27.

<sup>121</sup>ESC resolution 1978/33.

<sup>122</sup>See *Repertory Supplement No. 1.*, vol. II, under Article 62 (2), para. 8, footnote 7, and *Supplement No. 3.*, vol. II, under Article 62 (2), para. 11.

<sup>123</sup>See, for example, ESC resolutions 1506 (XLVIII), 1596 (L) and ESC decision, 1858<sup>th</sup> mtg. (LIV), agenda item 18.

<sup>124</sup>ESC resolution 1745 (LIV).

<sup>125</sup>Set up under Council resolution 1074 C (XXXIX).

<sup>126</sup>ESC resolution 1988 (LX).

disabled persons,<sup>148</sup> discrimination, racism and racial discrimination including apartheid,<sup>149</sup> rights of all persons subjected to any form of detention or imprisonment,<sup>150</sup> human rights education,<sup>151</sup> the right to development,<sup>152</sup> consumer protection<sup>153</sup> and advisory services in the field of human rights.<sup>154</sup>

### C. Procedures for the handling of communications concerning human rights

15. The major changes in the procedures for the handling of communications concerning human rights during the

<sup>148</sup>ESC resolution 1921 (LVIII).

<sup>149</sup>ESC resolutions 1938 A and B (LVIII), 1978/23 and 1978/73.

<sup>150</sup>ESC resolutions 1993 (LX) and 1978/17.

<sup>151</sup>ESC decision 228 (LXII).

<sup>152</sup>ESC decision 229 (LXII).

<sup>153</sup>ESC resolutions 2111 (LXIII) and 1978/42.

<sup>154</sup>ESC resolution 1978/14.

period under review were the establishment of a confidential procedure for dealing with communications relating to violations of human rights and fundamental freedoms empowering the Commission on Human Rights to take action in regard to specific situations,<sup>155</sup> the suspension of the special procedure dealing with communications concerning the status of women<sup>156</sup> and the entry into force of the Optional Protocol to the International Covenant on Civil and Political Rights.<sup>157</sup>

<sup>155</sup>See para. 28 below.

<sup>156</sup>See para. 29 below.

<sup>157</sup>The Optional Protocol to the International Covenant on Civil and Political Rights entered into force on 23 March 1976.

## II. ANALYTICAL SUMMARY OF PRACTICE

### \*\*A. Competence of the Economic and Social Council to make recommendations to non-member States

### \*\*B. Competence of the Economic and Social Council to make recommendations to the Trusteeship Council

### C. Power of the Economic and Social Council to conduct inquiries or investigations in matters relating to human rights<sup>158</sup>

16. The Economic and Social Council, by its resolution 1503 (XLVIII) of 27 May 1970,<sup>159</sup> established a confidential procedure for dealing with communications relating to violations of human rights and fundamental freedoms concerning situations which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights. Under the resolution the Council also empowered the Commission on Human Rights to determine whether any of the situations referred to it by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in compliance with that procedure might be a subject of an investigation by an ad hoc committee to be appointed by the Commission, subject to the consent of the Government concerned, and composed of independent persons. The committee set up under the procedure would have the authority to receive communications and hear witnesses. Investigations envisaged under that procedure are furthermore subject to the express consent of the State in question and shall be conducted in constant cooperation with that State under conditions determined by agreement with it and the committee's procedures shall be strictly confidential. Further preconditions for an investigation are that all available means at the national level have been resorted to and exhausted and that the situation does not relate to a matter which is being dealt with under certain other procedures.

17. Although during the period under review no investigating body was set up under the above procedure, the

<sup>158</sup>See also sect. II. F below, for the Ad Hoc Working Group of Experts and sect. II. G. below, on human rights and domestic jurisdiction.

<sup>159</sup>For a discussion on the procedure in general, see sect. II. E below.

Economic and Social Council approved<sup>160</sup> the recommendation of the Commission on Human Rights<sup>161</sup> to set up an Ad Hoc Working Group to inquire into the situation on human rights in Chile. Its mandate was subsequently extended in the following years.<sup>162</sup> The Ad Hoc Working Group was instructed to base its findings, inter alia, on the results of a visit to Chile and of oral and written evidence to be gathered from all relevant sources, and the Government of Chile was asked to extend its full cooperation to the Working Group in fulfilling its task, including the granting of all necessary facilities and complete freedom of movement in the country for that purpose.<sup>163</sup> The Ad Hoc Working Group visited Chile in July 1978 on the basis of a memorandum reflecting the exchanges between the Working Group and representatives of the Government of Chile.<sup>164</sup>

18. In the course of the discussion of the report of the Commission on Human Rights concerning the question of violations of human rights in Chile, one delegation expressed the view that whereas, in conformity with Articles 55 and 56 of the Charter, the United Nations had the task of promoting cooperation between States in ensuring respect for and observance of human rights and fundamental freedoms, its competence was quite different in such cases as South Africa, Chile and the territories occupied by Israel, where the gross and systematic violations of human rights had created a situation likely to impair friendly relations between nations or endanger peace.<sup>165</sup> The same delegation underlined that Economic and Social Council resolutions 1235 (XLII) of 6 June 1967 and 1503 (XLVIII) were not concerned with single cases of human rights violations, but rather provided for the investigation of situations revealing a consistent pattern of such violations; thus a State could, if it wished, authorize an international body to investigate

<sup>160</sup>ESC decision 80 (LVIII).

<sup>161</sup>E/CN.4/1179, resolution 8 (XXXI).

<sup>162</sup>ESC decisions 145 (LX), 233 (LXII) and 1978/23.

<sup>163</sup>E/CN.4/1179, resolution 8 (XXXI).

<sup>164</sup>A/33/331, annex VII.

<sup>165</sup>ESC (LX), E/AC.7/SR.780.

individual cases, but it could not be forced to submit to such procedures by a majority decision.<sup>166</sup>

19. Another delegation expressed the hope that the Human Rights Commission's decision to establish an Ad Hoc Working Group might be setting a precedent by establishing the general competence of the United Nations to secure respect for human rights in all situations where they were disregarded.<sup>167</sup>

20. It may be noted that the Economic and Social Council, at its fifty-sixth session,<sup>168</sup> took note of the reports of the Working Group on model rules of procedure for United Nations bodies dealing with violations of human rights<sup>169</sup> and brought the reports to the attention of all organs and bodies of the United Nations dealing with questions of human rights and fundamental freedoms.

#### **D. Power of the Economic and Social Council to evaluate allegations of violations of human rights and to make recommendations thereon**

21. The Economic and Social Council continued its previous practice of evaluating allegations of violations of human rights and of making specific recommendations thereon concerning, in particular, the situation in southern Africa,<sup>170</sup> Chile,<sup>171</sup> and the Arab territories occupied by Israel.<sup>172</sup> It not only identified the application of the doctrine of apartheid as being scientifically false, constituting a crime against humanity and a threat to international peace and security<sup>173</sup> as well as constituting flagrant violations of the principles of the Charter of the United Nations and of the obligations of Member States under the Charter,<sup>174</sup> but furthermore condemned specific manifestations of apartheid. In particular, the Council condemned, *inter alia*, certain trials of individuals,<sup>175</sup> the treatment of prisoners and detainees in prisons and in police custody,<sup>176</sup> the condition of Africans in the reserves, mass killings of suspected opponents of the regime in the Portuguese Territories, the prevalence of the most inhuman form of forced labour in the African Territories under Portuguese domination,<sup>177</sup> specific legislation, including the so-called "Constitution of Rhodesia",<sup>178</sup> the continuing suppression of trade-union rights<sup>179</sup> as well as the repression and detention of trade union leaders.<sup>180</sup> Furthermore, the Council condemned the role of States which continued to cooperate and give political, military, economic and other assistance to the racist and colonial regimes in southern Africa, as well as those who continued to maintain diplomatic, economic, cultural and other relations with those regimes, or which refrained from taking any steps to prevent natural or juridical persons within their jurisdiction from assisting those re-

gimes,<sup>181</sup> and finally the Council also condemned the role of transnational corporations which continued to collaborate with the racist minority régimes in that area.<sup>182</sup>

22. The remedies recommended by the Economic and Social Council included, for example, the call for sanctions,<sup>183</sup> for compliance with pertinent resolutions,<sup>184</sup> signing and ratification of the International Convention on the Suppression and Punishment of the Crime of Apartheid,<sup>185</sup> the adoption of relevant legislative, administrative, judicial and other measures,<sup>186</sup> and recommendations concerning the question of the punishment of war criminals and of persons who have committed crimes against humanity.<sup>187</sup> National sports federations of Member States were requested to refuse systematically to participate in all sports or other activities together with the representatives of the racist regime of South Africa.<sup>188</sup>

23. As regards the situation in Chile, the Economic and Social Council expressed its serious concern about the reported violations of human rights in Chile and profound distress at the constant flagrant violations of human rights, including the institutionalized practice of torture, cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention and exile in Chile.<sup>189</sup> It called upon the Government of Chile to take all necessary steps to restore and safeguard basic human rights and fundamental freedoms and to comply with the requests and observations made and the guarantees sought by the Commission on Human Rights in this regard.<sup>190</sup>

24. Concerning the question of the violation of human rights in the occupied Arab territories, including Palestine, the Council took note of the decisions of the Commission on Human Rights and commended it therefor and for its vigilance.<sup>191</sup> The Council requested the Commission to pursue its efforts in that regard and to continue to take the appropriate measures.<sup>192</sup>

25. The Economic and Social Council's authority to concern itself with sanctions was questioned by several delegations on the occasion of the discussion concerning the role of transnational corporations in southern Africa, and the view was held that the provisions envisaged in those resolutions went beyond the competence of the Council and the General Assembly, as that competence was vested in other United Nations organs, in particular the Security Council.<sup>193</sup> The view was also held that the General Assembly should not ask Governments to break off relations with other Member States.<sup>194</sup>

26. Some delegations also felt that neither the Commission on Human Rights nor the Economic and Social Coun-

<sup>166</sup>Ibid.

<sup>167</sup>ESC (LVIII), E/AC.7/SR.766.

<sup>168</sup>ESC resolution 1870 (LVI).

<sup>169</sup>E/CN.4/1086 and E/CN.4/1134.

<sup>170</sup>See, for example, ESC resolutions 1501 (XLVIII), 1784 (LIV), 1863 (LVI), 1938 A and B (LVIII) and 1978/73.

<sup>171</sup>ESC resolutions 1873 (LVI) and 1994 (LX).

<sup>172</sup>ESC resolutions 1505 (XLVIII), 2085 (LXII) and 1978/24.

<sup>173</sup>See, for example, ESC resolutions 1500 (XLVIII), 1591 (L), 1784 (LIV), 1864 (LVI), 1991 (LX) and 2056 (LXII).

<sup>174</sup>ESC resolutions 1938 A (LVIII), 1939 (LVIII) and 1989 (LX).

<sup>175</sup>ESC resolutions 1501 (XLVIII) and 1978/33.

<sup>176</sup>ESC resolutions 1501 (XLVIII) and 1978/21.

<sup>177</sup>ESC resolution 1501 (XLVIII).

<sup>178</sup>ESC resolutions 1501 (XLVIII), 1989 (LX) and 1978/21.

<sup>179</sup>ESC resolution 1509 (XLVIII).

<sup>180</sup>ESC resolution 1599 (L).

<sup>181</sup>ESC resolutions 1501 (XLVIII), 1591 (L), 1592 (L), and 1864 (LVI).

<sup>182</sup>ESC resolutions 2056 (LXII), 1978/7, 1978/33, 1978/72 and 1978/73.

<sup>183</sup>ESC resolutions 1501 (XLVIII), 1863 (LVI), 1938 A (LVIII) and decision 232 (LXII).

<sup>184</sup>ESC resolution 1501 (XLVIII), 1938 A (LVIII), 1989 (LX) and 1978/73.

<sup>185</sup>ESC resolutions 1869 (LVI), 1938 A (LVIII) and 1991 (LX).

<sup>186</sup>ESC resolutions 2056 (LXII), 1978/7 and 1978/73.

<sup>187</sup>ESC resolution 1500 (XLVIII) and 1791 (LIV).

<sup>188</sup>ESC resolution 1938 A (LVIII).

<sup>189</sup>ESC resolutions 1873 (LVI) and 1994 (LX).

<sup>190</sup>Ibid.

<sup>191</sup>ESC resolutions 2085 (LXII) and 1978/24.

<sup>192</sup>Ibid.

<sup>193</sup>ESC (LXII), 2058<sup>th</sup> mtg., paras. 13, 18, 20, 23, 32, 34, 37, 45 and 47, and ESC 1978, 14<sup>th</sup> mtg., paras. 28 - 31.

<sup>194</sup>ESC (XLVIII), E/AC.7/SR.641.

cil were the appropriate organs to declare apartheid a "crime against humanity" or to decide that apartheid constituted a "threat to international peace and security" which, like any decision concerning economic or other sanctions, was a decision to be made by the Security Council.<sup>195</sup>

27. On the occasion of the adoption of Economic and Social Council resolution 1599 (L) of 21 May 1971, which deals with allegations regarding infringements of trade union rights, one delegation pointed out that it had abstained in the vote and reaffirmed its disapproval of the continued existence of the Ad Hoc Working Group of Experts, which appeared to be assuming the role of a permanent quasi-judicial body.<sup>196</sup>

#### E. Questions relating to the procedure for dealing with communications concerning human rights<sup>197</sup>

28. At its forty-eighth session, the Economic and Social Council, on the recommendation of both the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, authorized,<sup>198</sup> at its forty-eighth session, the latter to appoint a working group to consider in private meetings all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959, which appeared to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms and to consider, also in private meetings, the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto as well as other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations requiring consideration by the Commission. It furthermore requested the Commission to examine any situation referred to it by the Sub-Commission and to determine whether it required a thorough study by the Commission and a report and recommendations thereon to the Council or whether it might be the subject of an investigation by an ad hoc committee,<sup>199</sup> and decided that all actions envisaged in the implementation of the resolution by the Sub-Commission or the Commission should remain confidential until such time as the Commission might decide to make recommendations to the Economic and Social Council.<sup>200</sup> In the same resolution, the Sub-Commission was directed to devise appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVII) of 30 July 1959 and in accordance with Council resolution 1235 (XLII) of 6 June 1967.<sup>201</sup> Beginning in 1974, the Council approved annually the decision of the

Commission on Human Rights to set up a working group to examine the documents submitted to it under Council resolution 1503 (XLVIII) of 27 May 1970.<sup>202</sup>

29. At its fifty-sixth session, the Economic and Social Council took note of the decision adopted by the Commission on the Status of Women at its 626<sup>th</sup> meeting, on 31 January 1974,<sup>203</sup> on the question of communications concerning the status of women, by which the Commission had decided that in the future, communications relating to the status of women should be considered in accordance with Economic and Social Council resolution 1503 (XLVIII), and to delete that item from its work programme. The special procedure provided for in resolution 76 (V) of 5 August 1947, as amended, remained suspended. Following the discussions held in the Social Committee of the Economic and Social Council and the invitation by the Council to reconsider the advisability of continuing to deal with communications concerning the status of women,<sup>204</sup> the Commission on the Status of Women adopted a draft resolution,<sup>205</sup> by which it decided to retain, as part of its work programme, the consideration of those communications. The Council, however, at its sixty-second session, decided<sup>206</sup> to defer action on the draft resolution.

30. In 1975, the Economic and Social Council, after having been made aware by the Commission on Human Rights that some non-governmental organizations had occasionally failed to observe the requirements of confidentiality laid down in paragraph 8 of resolution 1503 (XLVIII), as well as, in their oral interventions, to observe fully the terms of paragraph 36 (b) of resolution 1296 (XLVI) of 23 May 1968, adopted a resolution, at its fifty-eighth session,<sup>207</sup> by which it confirmed that communications from non-governmental organizations containing complaints of alleged violations of human rights should be handled according to the provisions of Council resolution 454 (XIV) of 28 July 1952 and paragraph 2 (b) of its resolution 728 F (XXVIII) of 30 July 1959, and decided that non-governmental organizations in consultative status had to comply without exception with the above-mentioned provisions.

31. The aforementioned concept of confidentiality was the subject of several discussions held on various occasions. During the debate on Economic and Social Council resolution 1919 (LVIII) of 5 May 1975 concerning communications from non-governmental organizations, various delegates emphasized the importance of the principle of confidentiality.<sup>208</sup> In 1977, on the occasion of the debate on the report of the Commission on Human Rights, the question arose as to which situations required confidential examination. The view was expressed that the established

<sup>195</sup>ESC (L), E/AC.7/SR.680.

<sup>196</sup>ESC (L), 1771<sup>st</sup> mtg., para. 33.

<sup>197</sup>See also sect. II. G below.

<sup>198</sup>ESC resolution 1503 (XLVIII).

<sup>199</sup>For the question on investigations sect. II. C above.

<sup>200</sup>For the discussion on the concept of confidentiality, see para. 30 below.

<sup>201</sup>The Sub-Commission on Prevention of Discrimination and Protection of Minorities, by its resolution 1 (XXIV) of 13 August 1971, adopted provisional procedures for dealing with the question of the admissibility of communications. By its resolution 2 (XXIV) of 16 August 1971, the Sub-Commission also decided that the members of the working group referred to above should be selected by its chairman, after consultations with the members of each geographical area, and con-

stituted of one member from each of the following geographical areas: Africa, Asia, Eastern Europe, Western Europe and other States, and Latin America. The Sub-Commission further decided that the working group should hold closed meetings and that the results of its work should be communicated to the Sub-Commission confidentially.

<sup>202</sup>ESC decisions 15 (LVI), 79 (LVIII), 147 (LX), 231 (LXII) and 1978/23.

<sup>203</sup>ESC decision 11 (LVI); E/CN.6/589, para. 4.

<sup>204</sup>ESC (LVI), E/AC.7/SR.732 and 742, and ESC (LVIII), E/AC.7/SR.768 and 769, and ESC decision 86 (LVIII).

<sup>205</sup>E/CN.6/608, draft resolution X.

<sup>206</sup>ESC decision 223 (LXII).

<sup>207</sup>ESC resolution 1919 (LVIII).

<sup>208</sup>ESC (LVIII), 1944<sup>th</sup> mtg., paras. 26, 27 and 39, and ESC (LVIII), 1947<sup>th</sup> mtg., paras. 29, 32 and 47.



procedure should not be automatically extended to all situations where violations of human rights were involved and that it was necessary to define which situations required confidential examination as there was no reason why events, which were not only common knowledge but had also given rise to widespread public indignation, should not be considered in public.<sup>209</sup> In the following year, the question was raised as to whether consideration in both closed and public meetings of a situation relating to human rights violations was compatible with the confidentiality of the procedures laid down in resolution 1503 (XLVIII), as previously discussed in the Commission on Human Rights, and several delegates welcomed the fact that the Commission, for the first time, had mentioned in public meeting the names of the countries, which had been considered by the Commission in private session under Council resolution 1503 (XLVIII), adding, however, that the Commission had agreed not to discuss the situation in those countries in public meetings.<sup>210</sup>

32. In 1977, a draft decision<sup>211</sup> was submitted by which the Economic and Social Council would have authorized the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a group of five members to analyse the documentary material received in connection with the human rights of persons subjected to any form of detention or imprisonment, for the Sub-Commission's annual review of developments in that field. The draft was rejected as some members feared that the objective was to replace the procedure established under resolution 1503 (XLVIII) with regard to the confidential treatment of communications and as it was felt that it was particularly unclear what was meant by "documentary material received".<sup>212</sup>

33. It may be noted that the Economic and Social Council, in 1978, authorized<sup>213</sup> the establishment of an open-ended working group of the Commission on Human Rights to continue the consideration of matters mentioned in Commission decision 4 (XXXIII) of 21 February 1977 as well as those referred to the Commission by the General Assembly in its resolution 32/130 of 16 December 1977, in which the Assembly requested the Commission to undertake an overall analysis of the alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms.

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

34. During the period under review, the Economic and Social Council continued with its practice to transmit, in accordance with its resolution 277 (X) of 17 February 1950, the communications received from the Director-General of the International Labour Office as well as those from international trade union organizations relating to the situation in South Africa to the Ad Hoc Working Group of Experts of the Commission on Human Rights, established originally by the Commission in its resolution 2

(XXIII) of 6 March 1967, and entrusted, *inter alia*, with the examination into allegations regarding infringements of trade-union rights and the investigation of charges of torture and ill-treatment of prisoners, detainees or persons in police custody in southern Africa.<sup>214</sup>

35. The Economic and Social Council furthermore approved several resolutions of the Commission on Human Rights,<sup>215</sup> and adopted various resolutions and decisions,<sup>216</sup> by which it extended and enlarged the mandate of the Ad Hoc Working Group of Experts.

36. By its resolution 1509 (XLVIII) of 28 May 1970, the Economic and Social Council extended the competence of the Ad Hoc Working Group of Experts to investigate the conditions of African producers of primary products as well as the sector of unorganized labour such as farm labour in the Portuguese colonies in Africa and of workers from Mozambique and Angola who were or had been employed in South Africa, Namibia and Southern Rhodesia. During the discussions and referring to the extension to include consideration of the Portuguese colonies in Africa, doubts were expressed as to whether the Ad Hoc Working Group of Experts could do anything to improve the lot of the African inhabitants of those Territories, as Portugal was still a member of ILO, which meant that the matter fell within ILO's terms of reference, and it was accordingly questioned whether the Council could take it up.<sup>217</sup>

37. During the fifty-eighth session of the Economic and Social Council, a discussion arose on the occasion of a report which was to be prepared by the Ad Hoc Working Group of Experts. One delegate argued that the report should not be submitted directly to the Council, but through the Commission on Human Rights; this would not limit the Council's responsibility under its resolution 277 (X) of 17 February 1950, since the Council had the authority to request the advice of any of its subsidiary organs.<sup>218</sup> The delegate further noted that the submission of different but closely related reports in the first instance to different organs was not in the best interest of the consideration of the entire range of problems.<sup>219</sup> At its fifty-eighth session,<sup>220</sup> the Council took note of the report in question and invited the Commission on Human Rights to consider the report and to submit its observations to the Council. By its resolution 1997 (LX) of 12 May 1976, the Council requested the Ad Hoc Working Group of Experts to continue to study the question of trade union rights in South Africa and to report thereon to the Commission on Human Rights and to the Council.

38. The question of the relationship between the Economic and Social Council and the International Labour Organization's Fact-Finding and Conciliation Commission on Freedom of Association arose in the course of the discussion of allegations regarding infringements of trade union rights in Puerto Rico. The question was raised as to whether the Council could request the Fact-Finding and Conciliation Commission to report its findings back to the

<sup>209</sup>ESC (LXII), E/AC.7/SR.811, ESC (LXII), E/AC.7/SR.814 and ESC (LXII), E/AC.7/SR.815.

<sup>210</sup>ESC 1978, E/C.2/SR. 10, 14 and 16, and E/CN.4/1292, para. 208.

<sup>211</sup>ESC (LXII), E/AC.7/L.731.

<sup>212</sup>ESC (LXII), E/AC.7/SR.815.

<sup>213</sup>ESC decision 1978/20.

<sup>214</sup>ESC decisions 18 (LVI), 25 (LVII), 84 (LVIII) and 237 (LXII).

<sup>215</sup>ESC resolutions 1868 (LVI), 1939 (LVIII) and 2082 A (LXII).

<sup>216</sup>ESC resolutions 1509 (XLVIII), 1599 (L), 1796 (LIV), 1997 (LX) and decisions 236 (LXII) and 1978/28.

<sup>217</sup>ESC (XLVIII), 1690<sup>th</sup> mtg., para. 7, and 1694<sup>th</sup> mtg., paras. 30, 31, 35 and 40.

<sup>218</sup>ESC (LVIII), E/AC.7/SR.766.

<sup>219</sup>*Ibid.*

<sup>220</sup>ESC decision 83 (LVIII).

Council and whether the Council could fix a time limit for the transmittal of the Commission's findings.<sup>221</sup> By a compromise decision,<sup>222</sup> the Council required that the Commission's findings should be transmitted to it as soon as possible, in keeping with the Commission's established practice.

### G. Human rights and domestic jurisdiction<sup>223</sup>

39. The question of domestic jurisdiction was raised on the occasion of the procedure established under resolution 1503 (XLVIII), the situation in Chile, the implementation of the International Covenants<sup>224</sup> and the possible creation of a post of high commissioner for human rights.

40. During consideration of resolution 1503 (XLVIII),<sup>225</sup> one delegation felt that it was not appropriate for an international intergovernmental organization to deal with matters which were wholly within the competence of national Governments and the relevant internal organizations. Objections concerned especially the proposal to establish an ad hoc committee to investigate complaints made by private individuals.<sup>226</sup> It was stated that under Article 2, paragraph 7, of the Charter, Members of the United Nations were not required to submit matters which were essentially within their domestic jurisdiction to settlement under the Charter and that the establishment of permanent supranational machinery to hear complaints from individuals against their own Governments would be contrary to the principle of international law according to which individuals were not subjects of international law.<sup>227</sup> The view was also held that it was necessary to find a balance between safeguarding the sovereignty of States in accordance with Article 2, paragraph 7, of the Charter and interpreting sovereignty in such a way as to render a State immune from criticism.<sup>228</sup> Another delegation felt that by strengthening the guarantees to be given to States, as proposed in multiple amendments to the draft resolution in question, the problem could be resolved.<sup>229</sup>

41. In 1973, during the debates in the Economic and Social Council on the report of the Commission on Human Rights, the representative of Greece strongly objected to the wording of paragraph 262 of the report, to the effect that some representatives were concerned about the situation in Greece following the military coup d'état of 21 April 1967. He argued that the procedure envisaged in the relevant resolutions of the Economic and Social Council provided that publicity could only be given to the relevant report as a sanction after all procedural steps had been exhausted.<sup>230</sup> An earlier letter to the United Nations also claimed that the above-mentioned reference to Greece was "in violation of both the spirit and the letter of Article 2,

paragraph 7, of the Charter".<sup>231</sup> That opinion was contested by another delegation stating that neither Article 2, paragraph 7, of the Charter nor the Council resolutions referred to could be interpreted as precluding Member States from referring to situations in which human rights were at stake.<sup>232</sup> The representative of another delegation stated that the reference in question was no more a violation of Article 2, paragraph 7, of the Charter than was the condemnation of the practice of apartheid in South Africa, and that the Commission was only following its usual practice in such cases.<sup>233</sup>

42. During the sixty-second session of the Economic and Social Council, one representative held the view that the fundamental contradiction between the concept of universal respect for sovereignty and the equally universal principle expressed in Articles 55 and 56 of the Charter, namely promotion of universal respect for and observance of human rights and fundamental freedoms for all, had been resolved to a considerable degree in the realm of human rights in the sense that one could go beyond national sovereignty in cases of gross violations of human rights, namely those that had reached a level judged by the whole world as intolerable.<sup>234</sup>

43. During the discussion on the human rights situation prevailing in Chile, the observer for Chile stated that his Government believed that the real concern for improving the human condition should not be regarded as interference in the internal affairs of a State; his Government understood the position of countries which were blameless in the field of human rights and which wished to see the principles of the Universal Declaration of Human Rights applied, but accorded no moral authority to those which hid behind the principle of non-interference in the internal affairs of a State in order to continue to subjugate their people and neighbouring peoples and even tried to subjugate others.<sup>235</sup>

44. As regards the implementation of the Human Rights Covenants, one representative felt that in that connection different interpretations seemed to be emerging: one tended to overemphasize the importance of economic, social and cultural rights and to underestimate that of civil and political rights, and another tended to single out specific civil rights which would fall exclusively within domestic jurisdiction. She expressed the view that all human rights and fundamental freedoms were an indivisible whole, that both Covenants contained derogation clauses and that in particular the International Covenant on Civil and Political Rights obliged the State concerned to inform other States parties of such derogations and clearly specified the conditions in which any restriction of fundamental freedoms could be allowed; exceptions could therefore not be justified by reference to the principle of non-interference in the internal affairs of other States.<sup>236</sup>

45. During the discussion of the agenda item entitled "Further promotion and encouragement of human rights and fundamental freedoms", one delegate, emphasizing

<sup>221</sup>ESC 1978, 32<sup>nd</sup> mtg., paras. 33, 38, 39, 47, 48 and 49.

<sup>222</sup>ESC decision 1978/41 of 21 July 1978.

<sup>223</sup>For a comprehensive treatment of the question of domestic jurisdiction, see also in the present *Supplement*, under Article 2 (7).

<sup>224</sup>The International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976; the International Covenant on Civil and Political Rights as well as the Optional Protocol thereto entered into force on 23 March 1976.

<sup>225</sup>ESC (XLVIII), 1693<sup>rd</sup> mtg., para. 63.

<sup>226</sup>ESC (XLVIII), E/AC.7/SR.637 and 639.

<sup>227</sup>ESC (XLVIII), E/AC.7/SR.641.

<sup>228</sup>ESC (XLVIII), E/AC.7/SR.642.

<sup>229</sup>ESC (XLVIII), E/AC.7/SR.638.

<sup>230</sup>ESC (LIV), 1858<sup>th</sup> mtg., para. 164.

<sup>231</sup>E/5333 (mimeographed), letter dated 9 May 1973 from the Permanent Representative of Greece to the United Nations addressed to the Secretary-General.

<sup>232</sup>ESC (LIV), 1858<sup>th</sup> mtg., para. 171.

<sup>233</sup>*Ibid.*, para. 175.

<sup>234</sup>ESC (LXII), E/AC.7/SR.813.

<sup>235</sup>ESC (LXII), E/AC.7/SR.814.

<sup>236</sup>ESC (LXII), E/AC.7/SR.809.

that the existing United Nations machinery was based on principles laid down in Article 2 of the Charter, which included the principle of the sovereign equality of States and that of non-interference in internal affairs, said that any attempt to place human rights above the State by creating such mechanisms as a high commissioner for human rights was bound to undermine the sovereignty of States and, in the final analysis, to jeopardize peaceful international co-operation.<sup>237</sup>

#### H. Question of recommendations to non-member States

46. The Economic and Social Council as well as the General Assembly continued to make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all to non-member States on various occasions, mainly under the terms "all States" and "all Governments".

47. On the occasion of the discussion of participation in the World Conference of the International Women's Year, a question arose with regard to the practice followed in the utilization of the "all States" clause.<sup>238</sup> The General Assembly, by its resolution 3276 (XXIX) of 10 December 1974, had decided to invite all States as well as the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States in their respective regions to participate in the Conference, the latter as observers.

48. The Chairman of the Third Committee of the General Assembly, on the request to give an interpretation of the "all States" formula, made the following, generally accepted, statement: "The Third Committee understands that the Secretary-General, in carrying out the functions as-

signed to him under the draft resolution on which the Committee is about to vote, will follow the practice of the General Assembly in the application of the all-States clause and that, when necessary, he will seek the opinion of the General Assembly before taking the relevant decisions."<sup>239</sup> The Secretary of the Economic and Social Council, replying to the questions forwarded during the debates in the Council, which concerned in particular the possible invitation of the Provisional Revolutionary Government of South Viet Nam, pointed out that the Secretariat followed the practice of the General Assembly in the application of the "all States" clause.<sup>240</sup> He explained further that in practice the General Assembly had invited to conferences States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, States parties to the Statute of the International Court of Justice and the Democratic Republic of Viet Nam but not the Provisional Revolutionary Government of South Viet Nam, and therefore the Secretariat had not been in a position to include the latter among the Governments invited to send representatives to the Conference.<sup>241</sup>

49. The Economic and Social Council, however, in the light of the historical events, decided that representatives of the Revolutionary Government of South Viet Nam should be invited. One delegation expressed doubts about the decision as it concerned recognition of Governments, and was therefore not within the competence of the Council, which was a subsidiary organ of the General Assembly.<sup>242</sup>

<sup>237</sup>ESC 1978, E/1978/C.2/SR.14.

<sup>238</sup>ESC (LVIII), 1944<sup>th</sup> mtg., paras. 50, 54, 55 and 76.

<sup>239</sup>GA (XXIX), 3<sup>rd</sup> Comm., draft resolution A/C.3/L.2117, as amended, is meant; for the statement, see GA (XXIX), 3<sup>rd</sup> Comm., 2079<sup>th</sup> mtg., para. 33, and A/9829/Add.1, para. 16.

<sup>240</sup>ESC (LVIII), 1945<sup>th</sup> mtg., paras. 3 and 4.

<sup>241</sup>Ibid.

<sup>242</sup>ESC (LVIII), 1947<sup>th</sup> mtg., paras. 58 and 61.