

ARTICLE 62 (3)

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ARTICLE 62 (3)

TEXT OF ARTICLE 62 (3)

It [the Economic and Social Council] may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

INTRODUCTORY NOTE

1. The structure of the present study is similar to that of the studies of Article 62 (3) in the *Repertory* and its *Supplements Nos. 1, 2, 3, 4 and 5*. The preparation of international instruments relating to the creation of specialized agencies and the preparation of international instruments under the auspices of the regional commissions of the Economic and Social Council are dealt with under Articles 59 and 68 respectively.

I. GENERAL SURVEY

2. During the period under review, the Economic and Social Council prepared, through its subsidiary organs, and submitted to the General Assembly one draft international instrument with respect to a matter falling within its competence. The draft international instrument dealt with torture and other cruel, inhuman or degrading treatment or punishment.¹ The Council further took action on the ongoing preparation, through its subsidiary organs, of international instruments with respect to matters falling within its competence. The Council also considered various recommendations concerning the feasibility or desirability of certain draft international instruments, including the submission of draft international instruments to international conferences of States under Article 62 (4).

¹See annex I.

II. ANALYTICAL SUMMARY OF PRACTICE

A. The preparation of draft conventions

3. Recalling General Assembly resolution 32/62, by which the Assembly had requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment, and resolution 33/178, by which the Assembly had requested the Commission to give high priority to the question of drafting such a convention,² the Economic and Social Council noted that it had not been found possible at the successive sessions of the Commission to complete the work on the draft convention until its fortieth session.³ The Council therefore repeatedly authorized an open-ended working group of the Commission to meet for a period of one week prior to the annual session of the Commission, until the Commission's fortieth session, to complete the work on the draft convention, and requested the Secretary-General to transmit to the Commission all relevant materials

relating to the draft convention.⁴ At its first regular session of 1984, the Council decided to transmit to the General Assembly the report of the working group established by the Commission to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, as well as the summary records of the debate on the question in the Commission during its fortieth session.⁵ The Council further noted the Commission's request to the Secretary-General to submit the comments received from Governments on the draft convention to the General Assembly at its thirty-ninth session, and the Commission's recommendation that the Assembly should consider, pursuant to its resolution 38/119, the draft convention as a matter of priority, with a view to the early adoption of a convention against torture and other cruel, inhuman or degrading treatment or punishment.⁶ At its thirty-ninth session, the General Assembly expressed its appreciation for the work achieved by the Commission on Human Rights in

²See also E S C decision 1978/24 and *Repertory, Supplement No. 5*, under Article 62 (3), para. 9.

³E S C resolutions 1979/35, 1980/32, 1981/37, 1982/38, 1983/39.

⁴*Ibid.*

⁵E S C decision 1984/134. See also E/CN.4/1984/72 and E/1984/14 and Corr.1.

⁶*Ibid.*

preparing the text of the draft convention and decided to adopt and open for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁷

4. During the period under review, the Economic and Social Council also took a number of decisions within the context of ongoing preparation, through its subsidiary organs, of draft international conventions.

5. On the question of an international convention on the protection of the rights of the child,⁸ the Economic and Social Council decided⁹ to bring to the attention of the General Assembly at its thirty-fourth session Commission on Human Rights resolution 19 (XXXV)¹⁰ and chapter XI of the report of the Commission on its thirty-fifth session,¹¹ as well as the relevant portions of the summary records of the meetings held by the Second (Social) Committee during the first regular session of 1979 of the Council.¹² Subsequently, and for the remainder of the period under review, the Council decided to authorize a one-week session of an open-ended working group prior to the annual session of the Commission on Human Rights to facilitate and speed up the completion of the work on a draft convention on the rights of the child.¹³

6. Noting the progress made by the Intergovernmental Working Group on a Code of Conduct on Transnational Corporations¹⁴ and by the Committee for an International Agreement on Illicit Payments,¹⁵ the Economic and Social Council at its second regular session of 1979 decided to transmit a draft resolution to the General Assembly for further consideration by which, inter alia, the Council reaffirmed that the formulation of a code of conduct by the Commission on Transnational Corporations should be given the highest priority and that the conclusion of an international agreement on illicit payments should in no way interfere with or delay that priority.¹⁶ By the same draft resolution, the Council urged States to complete the work of the Intergovernmental Working Group and the Committee and took measures for the organization of sessions of the Working Group and Committee.¹⁷

⁷G A resolution 39/46 and annex. See also para. 8 below.

⁸See *Repertory, Supplement No. 5*, under Article 62 (3), para. 8. See also G A resolution 33/166.

⁹E S C decision 1979/37.

¹⁰See E S C (1979), Suppl. No. 6.

¹¹*Ibid.*

¹²E/1979/C.2/SR.16 and 18-25.

¹³E S C decisions 1980/138, 1981/144, and E S C resolutions 1982/37, 1983/39, 1984/25. See also para. 9 below.

¹⁴The Intergovernmental Working Group on a Code of Conduct was established by the Commission on Transnational Corporations at its second session. See E S C (LXI), Suppl. No. 5, para. 51.

¹⁵The Committee on an International Agreement on Illicit Payments was established by the Economic and Social Council pursuant to its resolution 1978/71, paras. 5 and 6.

¹⁶E S C decision 1979/73, annex. See also E S C resolution 1978/71.

¹⁷E S C decision 1979/73. See also para. 15 below.

****1. THE PREPARATION OF DRAFT CONVENTIONS BY THE ECONOMIC AND SOCIAL COUNCIL AND THE APPLICABILITY OF ARTICLE 2 (7)**

2. DECISIONS OF THE GENERAL ASSEMBLY AFFECTING THE PREPARATION OF DRAFT CONVENTIONS BY THE ECONOMIC AND SOCIAL COUNCIL

7. In its resolution 35/5, in which the General Assembly declared, as a temporary measure, a one-year moratorium on the establishment of new subsidiary organs, the Assembly specifically provided that such measure would not apply to pertinent previous resolutions of the General Assembly which envisaged the preparation of documents, such as the drafting of international conventions or declarations, for which the establishment of subsidiary organs might be necessary.¹⁸

8. Within the context of the ongoing work by the Commission on Human Rights on the drafting of a convention against torture and other cruel, inhuman and degrading punishment pursuant to General Assembly resolution 32/62, the General Assembly repeatedly requested the Commission to complete as a matter of urgency the drafting of such a convention with a view to submitting a draft, including provisions for the effective implementation of the future convention, to the General Assembly.¹⁹

9. Within the context of the ongoing work of the Commission on Human Rights on the drafting of an international convention on the rights of the child pursuant to Economic and Social Council resolution 1978/18 and General Assembly resolution 33/166, the General Assembly repeatedly requested the Commission on Human Rights to continue to give the highest priority to the question of completing the draft convention on the rights of the child.²⁰ The Assembly also invited Member States to offer their effective contribution to the elaboration of the draft convention.²¹

10. Referring specifically to Article 62 (3) of the Charter of the United Nations, the General Assembly at its thirty-ninth session requested the Economic and Social Council to request the Commission on Narcotic Drugs to initiate at its thirty-first session, as a matter of priority, the preparation of a draft convention against illicit traffic in narcotic drugs and psychotropic substances and related activities which would consider the various aspects of the problem as a whole and, in particular, those not envisaged in existing international instruments, and to that end, to transmit to it a draft convention in the form of a working paper.²² The General Assembly further requested the Secretary-General to propose to the Commission on Narcotic Drugs to adjust the agenda of

¹⁸G A resolution 35/5. The moratorium on the establishment of new subsidiary organs of the General Assembly was subsequently extended until the end of 1982; see G A resolution 36/117 A, sect. I.

¹⁹G A resolutions 35/178, 36/60, 37/193, 38/119. See also para. 3 above.

²⁰G A resolutions 35/131, 36/57, 37/190, 38/114, 39/135. See also para. 5 above.

²¹G A resolutions 37/190, 38/114, 39/135.

²²G A resolution 39/141 and annex.

its thirty-first session to enable the Commission to initiate the preparation of the draft convention, and requested the Commission to report to the Economic and Social Council, if possible at its first regular session of 1985, on the results achieved in that respect.²³

****3. CONSULTATION WITH MEMBER STATES AND SPECIALIZED AGENCIES BY THE ECONOMIC AND SOCIAL COUNCIL IN THE PREPARATION OF DRAFT CONVENTIONS**

4. REQUESTS BY THE ECONOMIC AND SOCIAL COUNCIL FOR PREPARATION OF DRAFT CONVENTIONS BY OTHER BODIES

11. At its first regular session of 1979, the Economic and Social Council requested the Secretary-General to invite the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and other interested United Nations bodies to continue their cooperation towards the preparation by the General Assembly of an international convention on the protection of the rights of all migrant workers, in accordance with the relevant recommendations contained in the Programme of Action adopted by the World Conference to Combat Racism and Racial Discrimination,²⁴ and to submit to the Council a report on the results of that cooperation covering the activities being conducted by them in their respective spheres of competence.²⁵ The Council further requested the Secretary-General to communicate to Member States the results of the consultations which the General Assembly had requested him to take pursuant to Assembly resolution 33/163 in order to explore the possibility of drawing up an international convention on the rights of migrant workers.²⁶ Welcoming the large number of replies submitted by Member States and the international organizations concerned favouring the elaboration of an international convention on the protection of the rights of all migrant workers and their families, the General Assembly subsequently decided to create a working group open to all Member States to elaborate such an international convention, and requested the Secretary-General, in application of the requests of the Economic and Social Council, to give the Working Group all necessary support, with a view to facilitating the elaboration of the international convention.²⁷ Pursuant to that decision, the Council at its first regular session of 1980 invited the international organizations concerned to participate in the deliberations of the Working Group and to cooperate with a view to elaborating the convention.²⁸ The Council further decided to follow the progress of work relating to the elaboration by the General Assembly of the international convention and to make further recommendations to the Working Group in the light

²³Ibid.

²⁴See *Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978* (United Nations publication, Sales No. E.79.XIV.2), chap. II.

²⁵E S C resolution 1979/13.

²⁶Ibid., para. 3. See also G A resolution 33/163, para. 7.

²⁷G A resolution 34/172.

²⁸E S C resolution 1980/16.

of the conclusions concerning the subject which the Commission on Human Rights and the Commission for Social Development would submit to the Council.²⁹ The Council also repeatedly expressed the hope that substantial progress would be made by the Working Group during its successive intersessional meetings³⁰ so that it might fully discharge its mandate and complete the drafting of the convention.³¹

12. Within the context of the programme of work of the Committee of Experts on the Transport of Dangerous Goods,³² the Economic and Social Council at its first regular session of 1979 requested the Secretary-General to convene meetings of the Committee of Experts and its subsidiary bodies with a view to making satisfactory progress on the harmonization of codes and regulations relating to the transport of dangerous goods as well as on the studies on the possibility of drafting an international convention on the transport of dangerous goods.³³ At its first regular session of 1981, the Council took note with interest of the recommendation of the Committee of Experts to postpone further consideration of the question of a multimodal worldwide convention on the transport of dangerous goods.³⁴

13. At its second regular session of 1979, the Economic and Social Council took note of the note by the Secretary-General on the report of the Intergovernmental Preparatory Group on a Convention on International Multimodal Transport on the work of its sixth session³⁵ and decided to transmit the report, together with the documents referred to therein, to the General Assembly at its thirty-fourth session.³⁶

14. In its resolution 1980/21, in which the Economic and Social Council invited the Secretary-General to convene an international meeting of experts on cooperative investigation of financial activities involving illicit drug trafficking and the prosecution of major traffickers,³⁷ the Council further invited the Secretary-General to report to the Commission on Narcotic Drugs on the action taken pursuant to the meeting, including any draft model agreement elaborated for the consideration of the Commission, and to consider the possible transmission of any such draft agreement to Governments.³⁸

²⁹Ibid., para. 6.

³⁰See G A resolutions 35/198, 36/60, 37/170, 38/86, 39/102.

³¹E S C resolutions 1981/35, 1983/40, 1984/41.

³²ST/SG/AC.10/4 and Add.1-4.

³³E S C resolution 1979/42. See also E S C resolutions 645 G (XXIII), 724 C (XXVIII), 871 (XXXIII), 994 (XXXVI), 1110 (XL), 1488 (XLVIII), 1744 (LIV), 1973 (LIX), 1974 (LIX) and 2050 (LXII).

³⁴E S C resolution 1981/3, para. 3. See also E S C (1979), Suppl. No. 9A, para. 26, and ST/SG/AC.10/5 and Add. 1-6.

³⁵E/1979/96. The Intergovernmental Preparatory Group on a Convention on International Multimodal Transport was established by the Trade and Development Board of UNCTAD pursuant to E S C resolution 1734 (LIV), para. 2. See *Repertory, Supplement No. 5*, under Article 62 (3), para. 15.

³⁶E S C decision 1979/83.

³⁷E S C resolution 1980/21. See also the present *Supplement*, under Article 62 (4), para. 30.

³⁸E S C resolution 1980/21.

****B. Authorization by the Economic and Social Council to the Secretary-General and others to submit draft conventions to the General Assembly**

C. Submission by the Economic and Social Council of draft conventions to international conferences of States under Article 62 (4)

15. During the period under review, the Economic and Social Council at its second regular session of 1979 decided to transmit to the General Assembly for further consideration at its thirty-fourth session a draft resolution recommending that the General Assembly decide to convene in the last quarter of 1980 a United Nations negotiating conference to conclude an agreement on the basis of the work of the Intergovernmental Working Group on a Code of Conduct on Transnational Corporations³⁹ and of the work of the Committee on an International Agreement on Illicit Payments.⁴⁰ The Council also transmitted to the General

³⁹Concerning the draft code of conduct, see E S C resolutions 1980/60, 1982/68, and E S C decisions 1981/103, 1984/109.

⁴⁰E S C decision 1979/73, annex. Concerning the draft international agreement on illicit payments, see E/1978/115 and E/1979/104.

Assembly for further consideration a draft resolution by which the Council decided to convene a conference of plenipotentiaries to conclude an international agreement on illicit payments, to meet no later than 30 June 1980, and invited all States to participate in the conference.⁴¹ Subsequently, the Council transmitted to the General Assembly for further consideration at its thirty-fifth session a draft resolution by which the Council, noting the substantial preparatory work completed by the Committee on an International Agreement on Illicit Payments, decided to convene a conference of plenipotentiaries to conclude such an international agreement, to meet no later than 30 June 1981, and invited all States to participate in the conference.⁴² At its thirty-fifth session, however, the General Assembly took note of the report of its Second Committee, in which the Committee had agreed that no decision would be taken on the draft resolution regarding United Nations conferences to conclude a code of conduct on transnational corporations and an international agreement on illicit payments.⁴³

⁴¹Ibid. See also E S C resolution 1978/71, para. 7.

⁴²E S C decision 1980/174, annex.

⁴³G A decision 35/425 and A/35/545/Add.1. See also the present *Supplement*, under Article 62 (4), para. 27.

ANNEX I**List of draft conventions and protocols submitted
to the General Assembly**

Draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

E S C resolutions 1978/24, 1979/35, 1980/32, 1981/37, 1982/38, 1983/39; E S C decision 1984/134; G A resolutions 32/62, 33/178, 35/178, 36/60, 37/193, 38/119, 39/46.

****ANNEX II****List of draft conventions and protocols submitted
to international conferences of States**