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**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 that of the studies on Article 62 (2) in the *Repertory* and its *Supplements Nos. 1 to 9*. There was no significant development requiring discussion under the headings A, B, C, D, E, F and H in the Analytical Summary of Practice.

### I. GENERAL SURVEY

2. Before addressing the activities conducted by the Economic and Social Council, during the period under review, pursuant to Article 62(2), it should be recalled that, during that period, the Commission on Human Rights, a subsidiary organ of the Economic and Social Council, ceased to exist and was replaced by the Human Rights Council. The Human Rights Council was established as a subsidiary organ of the General Assembly by Assembly resolution 60/251 of 15 March 2006. While the Commission on Human Rights had reported to the Economic and Social Council, the Human Rights Council instead reports directly to the General Assembly on an annual basis. The newly established Human Rights Council is mandated, by paragraph 5 of the above resolution, to *inter alia* (a) promote human rights education and learning, (b) serve as a forum for dialogue on thematic issues on all human rights, (c) make recommendations to the General Assembly for the further development of international law in the area of human rights, (d) undertake universal periodic review of each State's progress towards human rights undertakings to human rights, (e) contribute towards preventing human rights violations and respond promptly to human rights emergencies, (f) work in close cooperation with governments, regional organizations, domestic human rights institutions and civil society in the field of human rights and (g) make recommendations on the promotion and protection of human rights.<sup>1</sup> Furthermore, the Human Rights Council is mandated, pursuant to paragraph 6 of resolution 60/251, to assume, review, improve and rationalize (where necessary) all mechanisms, mandates, functions and responsibilities of the Commission on Human Rights.

3. During the period under review, the Economic and Social Council<sup>2</sup> did not expressly refer to Article 62 (2) as a basis for making recommendations or requesting studies and reports for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms. The terminology used by the Council did not appear to follow any

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<sup>1</sup> GA resolution 60/241, para. 5.

<sup>2</sup> The Council.

general pattern. The Council, *inter alia*, used the terms “urges,”<sup>3</sup> “encourages,”<sup>4</sup> “invites”<sup>5</sup> or “requests”<sup>6</sup> in its resolutions and decisions.

## **A. Recommendations**

### **1. General**

4. During the period under review, the Council made numerous recommendations on a variety of subjects in the field of human rights. Those subjects included matters relating, *inter alia*, to ensuring that no one is subjected to discrimination based on genetic information, a draft resolution on draft optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, promoting and protecting the rights and dignity of persons with disabilities, ensuring a human rights-based approach to the situation of women and girls in Afghanistan, and the role of the United Nations system in providing full and productive employment and decent work for all.

5. The Council addressed recommendations primarily to the Secretary-General, but also to the General Assembly, all States or all Governments, Member States of the United Nations, specialized agencies and international organizations, the Office of the United Nations Commissioner for Human Rights, the United Nations Educational, Scientific and Cultural Organization, non-governmental organizations, its subsidiary organs such as the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on the Status of Women, the Commission for Social Development, the Commission on Crime Prevention and Criminal Justice, the United Nations Office on Drugs and Crime, the International Labor Organization, the International Research and Training Institute for the Advancement of Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination against Women.

### **2. To the General Assembly**

6. Recommendations to the General Assembly included: a draft resolution on draft optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,<sup>7</sup> encouraging States parties to United Nations human rights instruments to establish quota distribution systems by geographical region for election of the members of the treaty body,<sup>8</sup> to adopt and open for signature, ratification and accession the optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment,<sup>9</sup> a draft resolution on strengthening international cooperation in preventing and combating trafficking in persons and protecting victims of such trafficking,<sup>10</sup> considering the proposed supplement to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities,<sup>11</sup> a draft resolution on International cooperation in the prevention,

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<sup>3</sup> See for example ESC resolution 2005/8 of 21 July 2005.

<sup>4</sup> See for example ESC resolution 2005/9 of 21 July 2005.

<sup>5</sup> See for example ESC resolution 2006/16 of 26 July 2006.

<sup>6</sup> See for example ESC resolution 2006/29 of 27 July 2006.

<sup>7</sup> See E S C resolution 2000/2 of 10 May 2000.

<sup>8</sup> See E S C decision 2001/275 of 24 July 2001.

<sup>9</sup> See E S C resolution 2002/27 of 24 July 2002.

<sup>10</sup> See E S C resolution 2003/20 of 22 July 2003.

<sup>11</sup> See E S C resolution 2004/15 of 21 July 2004.

combating and elimination of kidnapping and in providing assistance to victims,<sup>12</sup> a draft resolution on the commemoration of the fifteenth anniversary of the adoption of the Declaration and Platform for Action,<sup>13</sup> and the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>14</sup>

### **3. To States and Governments**

7. During the period under review, the Council continued to make recommendations to States and Governments. Those recommendations included: promoting the development of national strategies for human rights education,<sup>15</sup> encouraging the incorporation and operationalization of disaster risk management analysis into humanitarian assistance activities, poverty eradication and sustainable development strategies,<sup>16</sup> urging increased funding for HIV/AIDS-related activities,<sup>17</sup> ensuring that no one is subjected to discrimination based on genetic information,<sup>18</sup> situation of and assistance to Palestinian women,<sup>19</sup> crime prevention and criminal justice responses to violence against women and girls,<sup>20</sup> promoting youth employment,<sup>21</sup> supporting national and international efforts for child justice reform, in particular through improved coordination in technical assistance,<sup>22</sup> supporting national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination,<sup>23</sup> and action against transnational organized crime, in particular the protection of witnesses,<sup>24</sup>

### **4. To specialized agencies**

8. Recommendations were made to specialized agencies on: promoting and protecting the rights and dignity of persons with disabilities,<sup>25</sup> combating the spread of HIV/AIDS in criminal justice pre-trial and correctional facilities,<sup>26</sup> strengthening international cooperation in preventing and combating trafficking in persons and protecting victims of such trafficking,<sup>27</sup> as well as the role of the United Nations system in providing full and productive employment and decent work for all.<sup>28</sup>

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<sup>12</sup> See E S C resolution 2006/19 of 27 July 2006.

<sup>13</sup> See E S C decision 2009/233 of 28 July 2009.

<sup>14</sup> See E S C resolution 2005/30 of 25 July 2005.

<sup>15</sup> E S C resolution 2001/38 of 26 July 2001.

<sup>16</sup> E S C resolution 2002/32 of 26 July 2002.

<sup>17</sup> E S C resolution 2003/28 of 22 July 2003.

<sup>18</sup> E S C resolution 2004/9 of 21 July 2004.

<sup>19</sup> E S C resolution 2006/8 of 25 July 2006.

<sup>20</sup> E S C resolution 2006/29 of 27 July 2006.

<sup>21</sup> E S C resolution 2006/15 of 26 July 2006.

<sup>22</sup> E S C resolution 2009/26 of 30 July 2009.

<sup>23</sup> E S C resolution 2007/23 of 26 July 2007.

<sup>24</sup> E S C resolution 2005/16 of 22 July 2005.

<sup>25</sup> E S C resolution 2003/12 of 21 July 2003.

<sup>26</sup> E S C resolution 2004/35 of 21 July 2004.

<sup>27</sup> See e.g. E S C resolution 2006/27 of 27 July 2006.

<sup>28</sup> E S C resolution 2007/2 of 17 July 2007.

## 5. To NGOs and other entities

9. Recommendations were made to NGOs and other entities on: developing human rights education programmes and strategies,<sup>29</sup> encouraging the implementation of the Programme of Action for Youth,<sup>30</sup> ensuring a human rights-based approach to the situation of women and girls in Afghanistan,<sup>31</sup> mainstreaming a gender perspective into all policies and programmes in the UN system (recommendation to Inter-Agency Network on Women and Gender Equality),<sup>32</sup> further promotion of equalization of opportunities by, for and with persons with disabilities and protection of their human rights (to NGOs),<sup>33</sup> and action to promote effective crime prevention.<sup>34</sup>

### B. Studies and reports

#### 1. General

10. During the period under review, the Council took a number of decisions with regard to issues of reporting by several United National bodies.

11. The Council continued to request the Secretary-General to review the implementation of the agreed conclusions 1997/2 in his annual reports to the Commission on the Status of Women, the Economic and Social Council, and the General Assembly on the follow-up and progress made in the implementation by United Nations entities and intergovernmental bodies of the Beijing Declaration and Platform for Action, and the outcome of the twenty-third special session of the General Assembly, with a particular focus on bridging the gap between policies and practice on the basis of gender mainstreaming action plans.<sup>35</sup>

12. The Council held a discussion on strengthening further the Council so as to help it fulfill the role ascribed to it in the Charter of the United Nations.<sup>36</sup> In particular, the Council agreed to strengthen its capacity to serve as a central high-level forum for the consideration or major economic and social issues, and to provide overall guidance and coordination in these areas to the United Nations system.

13. With respect to the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, the Council requested that the Intergovernmental Working Group make recommendations on the effective implementation of the Durban Declaration and Programme of Action.<sup>37</sup> Furthermore, with respect to the comprehensive implementation of, and follow up to, the Durban Declaration and Programme of Action, the Council endorsed the Commission's decision to prolong the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance for three additional years and supported the call to the Secretary-General to provide all necessary assistance for the Rapporteur to complete his mandate efficiently,

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<sup>29</sup> E S C resolution 2001/39 of 26 July 2001.

<sup>30</sup> E S C resolution 2003/11 of 21 July 2003.

<sup>31</sup> E S C resolution 2004/10 of 21 July 2004.

<sup>32</sup> E S C resolution 2009/12 of 28 July 2009.

<sup>33</sup> E S C resolution 2008/20 of 24 July 2008.

<sup>34</sup> E S C resolution 2005/22 of 22 July 2005.

<sup>35</sup> ESC resolution 2004/4 of 7 July 2004.

<sup>36</sup> E/2002/L.35, Chapter V, p. 29.

<sup>37</sup> E S C decision 2003/246.

effectively and expeditiously, and to enable the Rapporteur to submit an interim report to the General Assembly at the sixtieth session.<sup>38</sup>

14. The Council decided to transmit to the General Assembly a draft resolution on Follow-up to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice. Therein, it encouraged Member States to consider utilizing the reporting checklist developed on the implementation of the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, as a useful tool for self-assessment in reporting on follow-up on the Eleventh Congress. It requested the Secretary-General to ensure follow-up to the resolution and to report on it to the General Assembly by means of the Commission on Crime Prevention and Criminal Justice.<sup>39</sup>

15. The Council requested the Secretary-General to submit proposals concerning the provision of adequate resources to support the Permanent Forum on Indigenous Issues.<sup>40</sup>

## **2. On particular type of rights and issues**

16. The Council requested studies and reports on, *inter alia*, the progress made in mainstreaming a gender perspective within the United Nations system,<sup>41</sup> human rights and human responsibilities,<sup>42</sup> the coordination of emergency humanitarian assistance of the United Nations,<sup>43</sup> the implementation of a resolution on the protection and promotion of the rights and dignity of persons with disabilities,<sup>44</sup> genetic privacy and non-discrimination,<sup>45</sup> the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people's self-determination,<sup>46</sup> independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers,<sup>47</sup> human rights and transnational corporations and other business enterprises,<sup>48</sup> promotion of the realization of the right to drinking water and sanitation,<sup>49</sup> providing technical assistance for prison reform in Africa and the development of viable alternatives to imprisonment,<sup>50</sup> and international cooperation to prevent, combat and eliminate kidnapping and to provide assistance to victims of kidnapping.<sup>51</sup>

## **3. On the rights of specific groups and individuals**

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<sup>38</sup> E S C decision 2005/54 of 25 July 2005.

<sup>39</sup> ESC resolution 2007/17 of 26 July 2007, paras 3 and 13

<sup>40</sup> E S C decision 2002/287 of 25 July 2002.

<sup>41</sup> E S C resolution 2001/41 of 26 July 2001.

<sup>42</sup> E S C decision 2002/277 of 25 July 2002.

<sup>43</sup> E S C resolution 2003/5 of 15 July 2003.

<sup>44</sup> E S C resolution 2004/14 of 21 July 2004.

<sup>45</sup> E S C resolution 2004/9 of 21 July 2004.

<sup>46</sup> E S C decision 2005/255 of 25 July 2005.

<sup>47</sup> E S C decision 2005/263 of July 2005.

<sup>48</sup> E S C decision 2005/273 of 25 July 2005.

<sup>49</sup> E S C decision 2005/285 of 25 July 2005.

<sup>50</sup> E S C resolution 2006/22 of 27 July 2006.

<sup>51</sup> E S C resolution 2009/24 of 30 July 2009.

17. The Council requested studies and reports on, *inter alia*, the situation of women and girls in Afghanistan,<sup>52</sup> the revitalization and strengthening of the International Research and Training Institute for the Advancement of Women,<sup>53</sup> the human rights situation of Lebanese detainees in Israel,<sup>54</sup> the priority areas of youth,<sup>55</sup> human rights and indigenous issues,<sup>56</sup> the rights of persons belonging to national or ethnic, religious and linguistic minorities,<sup>57</sup> and the situation of, and assistance to, Palestinian women.<sup>58</sup>

#### 4. On the situation of human rights in specific countries

18. The Council initiated studies and reports on the situation of human rights in several countries, which it entrusted to Special Rapporteurs, Special Envoys or Special Representatives or independent experts, *inter alia*, for Cambodia,<sup>59</sup> Somalia,<sup>60</sup> Belarus,<sup>61</sup> southern Lebanon and the western Bekaa,<sup>62</sup> the Islamic Republic of Iran,<sup>63</sup> the Democratic Republic of the Congo,<sup>64</sup> Haiti,<sup>65</sup> Equatorial Guinea,<sup>66</sup> Myanmar,<sup>67</sup> Afghanistan,<sup>68</sup> Iraq,<sup>69</sup> the Sudan,<sup>70</sup> the territory of the former Yugoslavia,<sup>71</sup> Rwanda<sup>72</sup>, Burundi<sup>73</sup> and East Timor.<sup>74</sup>

#### 5. Addressees of requests for studies and reports

19. In accordance with previous practice, requests for studies and reports were addressed in most cases to the Secretary-General but also to Member States, States parties to international conventions on human rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, special agencies, regional commissions, non-governmental organizations, and ad hoc working groups of experts and various Special Rapporteurs.<sup>75</sup>

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<sup>52</sup> E S C resolution 2000/9 of 27 July 2000.

<sup>53</sup> E S C resolution 2001/40 of 26 July 2001.

<sup>54</sup> E S C decision 2002/244 of 25 July, 2002.

<sup>55</sup> E S C resolution 2003/11 of 21 July 2003.

<sup>56</sup> E S C decision 2005/270 of 25 July 2005.

<sup>57</sup> E S C decision 2005/278 of 25 July 2005.

<sup>58</sup> E S C resolution 2008/11 of 23 July 2008.

<sup>59</sup> E S C decisions 2000/278 of 28 July 2000 and 2001/278 of 24 July 2001.

<sup>60</sup> E S C decisions 2000/280 of 28 July 2000, 2001/277 of 24 July 2001, 2002/273 of 25 July 2002, 2003/258 of 23 July 2003 and 2005/281 of 25 July 2005.

<sup>61</sup> E S C decision 2005/259 of 25 July 2005.

<sup>62</sup> E S C decision 2000/249 of 28 July 2000.

<sup>63</sup> E S C decision 2000/259 of 28 July 2000.

<sup>64</sup> E S C decisions 2000/248 of 28 July 2000, 2001/254 of 24 July 2001, 2002/248 of 25 July 2002, 2003/240 of 23 July 2003 and 2004/225 of 15 June 2004

<sup>65</sup> E S C decisions 2000/238 of 28 July 2000, 2001/290 of 24 July 2001, 2002/284 of 25 July 2002 and 2004/322 of 11 November 2004.

<sup>66</sup> E S C decisions 2000/252 of 28 July 2000, 2001/257 of 24 July 2001 and 2002/245 of 25 July 2002,

<sup>67</sup> E S C decisions 2000/255 of 28 July 2000, 2001/251 of 24 July 2001, 2002/269 of 25 July 2002, 2003/239 of 23 July 2003, 2004/266 of 22 July 2004, and 2005/257 of 25 July 2005.

<sup>68</sup> E S C decisions 2000/251 of 28 July 2000, 2001/249 of 24 July 2001, 2003/257 of 23 July 2003 and 2004/284 of 22 July 2004.

<sup>69</sup> E S C decision 2000/250 of 28 July 2000, 2001/250 of 24 July 2001 and 2003/262 of 23 July 2003.

<sup>70</sup> E S C decisions 2000/258 of 28 July 2000, 2001/253 of 24 July 2001, 2004/229 of 15 June 2004 and 2005/280 of 25 July 2005.

<sup>71</sup> E S C decision 2000/257 of 28 July 2000.

<sup>72</sup> E S C decision 2000/254 of 28 July 2000.

<sup>73</sup> E S C decisions 2000/253 of 28 July 2000, 2001/256 of 24 July 2001, 2002/246 of 25 July 2002, 2003/241 of 23 July 2003, and 2005/275 of 25 July 2005.

<sup>74</sup> E S C decision 2001/289 of 24 July 2001, and 2002/283 of 25 July 2002.

<sup>75</sup> For the details, see the decisions and resolutions cited in sections B.1 to B.4 above.

Concerning working groups and Special Rapporteurs (or Special Representatives and Independent Experts), the Council approved the requests of the Commission on Human Rights to the Secretary-General to provide them with all necessary assistance and resources required to perform their functions.

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

#### **A new Complaint Procedure for gross violations of human rights**

20. Significant developments relating to the handling of communications occurred with the establishment, on 15 March 2006, of the Human Rights Council, replacing the Commission on Human Rights, a subsidiary organ of the Economic and Social Council which ceased to exist.<sup>76</sup> It is to be recalled that the newly established Human Rights Council, unlike the Commission on Human Rights, is a subsidiary organ of the General Assembly to which it reports directly. Pursuant to General Assembly resolution 60/251, the Human Rights Council established, through its resolution 5/1 entitled “Institution-building of the United Nations Human Rights Council”, a revised Complaints Procedure mechanism. This procedure is intended to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms taking place in any part of the world, under any circumstance.<sup>77</sup> The former Commission on Human Rights’s 1503 Procedure (established by Economic and Social Council resolution 1503 of 27 May 1970) was used as a the working basis and was improved where necessary in order to ensure that the complaint procedure is “impartial, objective, efficient, victims-oriented and conducted in a timely manner”.<sup>78</sup>

21. The new Complaint Procedure is confidential and attempts to enhance cooperation with the relevant State.<sup>79</sup> The procedure is victim-oriented and should be conducted in a timely manner.<sup>80</sup> Two working groups are established to examine communications and bring the Human Rights Council’s attention to consistent patterns of violations of human rights and fundamental freedoms. The Working Group on Communications decides on the admissibility of a communication and assesses the merits of alleged violations.<sup>81</sup> The Working Group on Communications then transmits those admissible communications, together with recommendations thereon, to the Working Group on Situations.<sup>82</sup> Based on the information provided from the Working Group on Communications, the Working Group on Situations is mandated to present a report to the Human Rights Council regarding consistent patterns of human rights violations and to make recommendation to the Council on actions to be taken.<sup>83</sup> Admissibility criteria for communications under the Complaint Procedure include the requirement that the complaint not be manifestly politically motivated, and that its objective be consistent with the Charter of the United Nations and the Universal Declaration of Human Rights and other human rights instruments.<sup>84</sup>

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<sup>76</sup> See above, para. 2.

<sup>77</sup> Human Rights Council Resolution 5/1, para. 85.

<sup>78</sup> Human Rights Council Resolution 5/1, para. 86.

<sup>79</sup> Human Rights Council Resolution 5/1, paras 100 and 101.

<sup>80</sup> Human Rights Council Resolution 5/1, para. 100.

<sup>81</sup> Human Rights Council Resolution 5/1, para. 95.

<sup>82</sup> Human Rights Council Resolution 5/1, para. 95.

<sup>83</sup> Human Rights Council Resolution 5/1, para. 98.

<sup>84</sup> Human Rights Council Resolution 5/1, para. 87 (a).



## II. Analytical summary of practice

- \*\*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
- \*\*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

22. The question of human rights and domestic jurisdiction was specifically raised during the Council's discussions relating to human rights abuses in Myanmar.

#### SITUATION OF HUMAN RIGHTS IN MYANMAR

23. During the period under review, the Council continued to deal with the situation of human rights in Myanmar by, *inter alia*, its draft decision 3.<sup>85</sup>

24. The delegate of Myanmar indicated that his country attached particular importance to the protection and promotion of human rights in accordance with the principles enshrined in the Charter of the United Nations. He further stated that Myanmar believed in a fair, constructive, and objective approach based on dialogue and respect for the principles of territorial integrity, non-selectivity, non-interference and national sovereignty.<sup>86</sup>

25. Another delegation indicated that its country understood the difficulties and challenges that Myanmar was facing in striving towards reconstruction and reconciliation of its country. It was also stated that dialogue was preferable to political pressure in the promotion of human rights by the international community.<sup>87</sup>

### \*\*H. The question of recommendations to non-member States

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<sup>85</sup> E/2005/SR.38.

<sup>86</sup> E/2005/SR.38, para. 11.

<sup>87</sup> E/2005/SR.38, para. 12.