

## ARTICLE 62 (2)

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#### 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 Article 62 (2) in volume III of the Repertory. The material included is mainly supplementary. Reference is also made to the studies of Article 2 (7) and Article 55 c in this Supplement.
2. There is no new development to report under the following headings in the 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; and E. questions relating to the procedure for dealing with communications concerning human rights. Some further material is included under the following headings: F. questions relating to the procedure for dealing with allegations regarding infringements of trade union rights; and G. human rights and domestic jurisdiction.

## I. GENERAL SURVEY

## A. Recommendations

3. During the period under review the Council has made some twenty recommendations. For the most part these recommendations dealt with freedom of information and the status of women. Recommendations have also been made on advisory services in the field of human rights and forced labour.
4. Recommendations have been made to the General Assembly for the establishment of advisory services in the field of human rights, 1/ and for the adoption of a convention on the nationality of married women. 2/ In response to a request from the General Assembly the Council has also recommended 3/ that the General Assembly should consider the draft Convention on Freedom of Information at its twelfth session in the hope that conditions will be more favourable then.
5. Recommendations to States have been addressed to States Members of the United Nations, 4/ to States Members of the United Nations or of a specialized agency, 5/ and to States Members or non-members of the United Nations. 6/ The Council addressed its resolution 607 (XXI), in more general terms, since it urged that action be taken for the elimination of forced labour "wherever it may exist".

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- 1/ E S C resolution 586 E (XX). See also E S C resolution 574 A (XIX) by which the Council recommended that the General Assembly include in the 1956 budget funds for the programme to promote freedom of information by providing experts, fellowships and seminars.
  - 2/ E S C resolution 587 E (XX). The Council also submitted a draft convention on the subject to the General Assembly, for consideration at its eleventh session. See also in this Supplement under Article 13 (1) b, and Article 62 (3).
  - 3/ E S C resolution 574 C (XIX).
  - 4/ E S C resolution 587 F, I (XX) relating to opportunities for women in handicrafts and cottage industries.
  - 5/ E S C resolution 574 D (XIX) relating to or concerning media of information in under-developed countries.
  - 6/ E S C resolutions 574 B (XIX) on freedom of information, 587 C; D, III; F, II and III and G (XX) relating to the status of women.

6. Recommendations have been made to the following specialized agencies: The International Labour Organisation (ILO) in resolution 607 (XXI) on forced labour; United Nations Educational Scientific and Cultural Organization (UNESCO) in resolution 574 A (XIX) relating to freedom of information and resolution 587 G (XX) concerning educational opportunities for women; UNESCO and other specialized agencies concerned on the celebration of the tenth anniversary of the Universal Declaration of Human Rights.

7. The Council has also made recommendations to non-governmental organizations in resolution 587 C (XX) and 587 F, II (XX) concerning the status of women and in resolution 624 C (XXII) on the celebration of the tenth anniversary of the Universal Declaration of Human Rights.

### B. Studies and reports

8. The Council has continued to make or to initiate studies and reports. It has instituted 7/ a system of triennial reports on human rights to be submitted by States Members of the United Nations and of the specialized agencies. It has endorsed 8/ the undertaking of special studies of specific rights or groups of rights and it has reiterated its approval 9/ of a programme of studies in the field of discrimination. Other studies and reports have dealt with subjects relating to status of women, 10/ freedom of information, 11/ and forced labour. 12/

7/ By resolution 624 B, I (XXII) the Council requested States Members of the United Nations and of the specialized agencies to transmit to the Secretary-General, every three years, a report describing developments and the progress achieved during the preceding three years in the field of human rights and measures taken to safeguard human liberty in their metropolitan area and Non-Self-Governing and Trust Territories. The report is to deal with the rights enumerated in the Universal Declaration of Human Rights and with the right of peoples to self-determination. The Council further invited the specialized agencies, in respect of rights coming within their purview, to transmit to the Secretary-General every three years, a report on a topical basis, summarizing the information which they have received from their member States during the preceding three years.

8/ E S C resolution 624 B, I (XXII). The Council, in resolution 624 B, II (XXII), approved as the first subject for special study the right of everyone to be free from arbitrary arrest, detention and exile.

9/ See E S C resolution 586 C (XX) concerning studies of discrimination in political rights, religious rights and practices, and "the right of everyone to leave any country, including his own, and to return to his country". By resolution 586 B (XX) the Council reaffirmed its decision set forth in resolution 545 D (XVIII) that immigration be excluded from the scope of the latter study.

10/ E S C resolutions 587 B; D, I; F, I and G (XX); and 625 B (XXII).

11/ E S C resolution 574 A and D (XIX).

12/ In resolution 607 (XXI) the Council expressed its interest in further action to be taken on forced labour by the ILO and invited the latter to include henceforth in its annual report to the Council an account of actions taken in this field.

9. The practice of the Council concerning methods used for preparation of studies and reports has been essentially the same as that described in the Repertory. 13/ The following may be mentioned as illustrations: the undertaking of studies in the field of discrimination by special rapporteurs appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities; 14/ the preparation of a study of the right of everyone to be free from arbitrary arrest, detention and exile by a committee of four States represented on the Commission on Human Rights; 15/ the request to the Secretary-General to report on developments of technical assistance programmes for the promotion of freedom of information 16/ and the request to the Secretary-General and the ILO to prepare a series of reports concerning steps taken by States Members of the United Nations and of the ILO on the removal of economic discrimination against women referred to in Council resolution 587 F, III (XX). 17/

10. The Council has continued the practice of inviting, 18/ when appropriate the co-operation of States, specialized agencies, its own commissions and non-governmental organizations, in furnishing material for studies and reports.

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

11. There has been no change in the procedures for the handling of communications concerning human rights in general and trade union rights in particular, 19/ but the Council has by resolution 607 (XXI) requested the Secretary-General to transmit to the Director-General of the ILO any information which he may receive relating to forced labour, notwithstanding the provision of Council resolution 75 (V), as amended.

13/ See in the Repertory, vol. III, under Article 62 (2), paras. 13-20.

14/ E S C resolution 586 C (XX).

15/ E S C resolution 624 B, II (XXII).

16/ E S C resolution 574 A (XIX).

17/ E S C resolution 625 B, III (XXII).

18/ For example, by resolution 574 D (XIX), the Council requested Governments of States Members of the United Nations and Governments of non-member States members of specialized agencies to transmit to the Secretary-General in so far as they had not already done so, certain information, observations and suggestions relating to media of information. In connexion with the studies on discrimination in various fields the Council, in resolution 586 C (XX), expressed the hope that the specialized agencies and non-governmental organizations concerned would continue to give the Sub-Commission on Prevention of Discrimination and Protection of Minorities all the co-operation and assistance it might require, and that the Commission on the Status of Women would continue to co-operate with the Sub-Commission. By resolution 624 B, I (XXII), the Council invited the specialized agencies and the non-governmental organizations in consultative relationship with the Council to co-operate in carrying out any special study undertaken by the Commission on Human Rights. Again in resolution 625 B, II (XXII) the Council requested the Secretary-General to obtain from non-governmental organizations with consultative status information concerning existing problems of working women, including working mothers with family responsibilities, and means for the improvement of their position.

19/ See in the Repertory, vol. III, under Article 62 (2), paras. 21 and 69-71. See also paras. 12-14 below.

20/ See also para. 5 above.

## II. ANALYTICAL SUMMARY OF PRACTICE

- \*\* A. The competence of the Economic and Social Council to make recommendations to non-member States 20/
- \*\* 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 21/
- F. Questions relating to the procedure for dealing with allegations regarding infringements of trade union rights

12. By resolution 575 D (XIX) the Council decided to refer the "allegations concerning East Germany recorded in document E/2587" to the ILO for consideration. During the discussion in the Social Committee of the Council it was stated 22/ that the appropriate authority in the case of East Germany was the Government of the Soviet Union. Since the Soviet Union was a member of the ILO the allegation should be referred automatically to the ILO as provided under Council resolutions 277 (X) and 474 A (XV). 23/ As it was a special case, however, the Council would perhaps be well advised to adopt a resolution to that effect. The representative of the Soviet Union opposed the proposal. It would be incorrect, he said, to refer the matter to the ILO, of which the German Democratic Republic was not a member. The German Democratic Republic was a sovereign State, responsible for its own affairs, both domestic and foreign, and had been so recognized by the Soviet Union Government in its declaration of 26 March 1954. The contention that the allegations in question came within the competence of the Soviet Union Government was quite inadmissible.

13. Although the Council did not specifically provide a procedure in its resolution 277 (X) for dealing with allegations of infringements of trade union rights against States which are not Members of the United Nations or the ILO, it has in practice dealt with such allegations. 24/ Thus, when the Council received certain allegations against Romania and Spain, which were at that time not Members of either the United Nations or the ILO, it asked the Secretary-General to bring to the attention of the Governments of Romania and Spain the allegations made against them as well as the provisions of resolution 277 (X), and to invite the Governments to submit their observations on the matter. 25/ The Governments were repeatedly asked 26/ for their observations and in resolutions 523 A and B (XVII) the Council requested the

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20/ See also para. 5 above.

21/ See also para. 11 above.

22/ E/AC.7/SR.306, p. 10; E/AC.7/SR.307, p. 4.

23/ See in the Repertory, vol. III, under Article 62 (2), paras. 69-82.

24/ Ibid., para. 73.

25/ E S C resolution 351 (XII).

26/ E S C resolutions 444 (XIV) and 474 C (XV).

Secretary-General to invite them "to re-consider" their attitude and to indicate their "willingness to co-operate with the United Nations in its efforts to safeguard trade union rights by submitting their observations on the allegations".

14. It was recalled at the nineteenth session of the Council 27/ that the Council had been moved by the desire of the United Nations to safeguard trade union rights, which were among the most elementary and important of all human rights. It was regretted that the Governments concerned had not co-operated, but opinions differed about any further action. Some representatives doubted whether the United Nations or the ILO could consider allegations against States which had no legal relationship with the United Nations or the ILO. Any further action could only be with the co-operation and consent of the States concerned. It was not possible to exert pressure on Governments. Their failure to reply to the Council's requests was equivalent to a refusal and nothing would be gained by referring allegations to the ILO; it might even give the Governments a pretext for co-operating less. On the other hand, it was urged that in order to avoid the danger that the Council's role might become ineffectual, the Council should refer the allegations to the ILO. Another view urged a new approach, in order to avoid the practical difficulties inherent in the existing procedure. After discussion, the Council decided in resolutions 575 B and C (XIX) to "take note with regret of the fact" that the Governments of Romania and Spain had "not responded to the invitation" transmitted to them pursuant to resolution 523 A and B (XVII).

#### G. Human rights and domestic jurisdiction 28/

15. The question of a possible conflict between Articles 62 (2) and 2 (7) has been raised in connexion with recommendations concerning the legal status of married women, 29/ parental rights and duties, 30/ and censorship of outgoing new dispatches, 31/ and certain recommendations concerning international respect for the right of peoples and nations to self-determination. 32/

16. Article 2 (7) was also referred to as one of the arguments used in connexion with a study of discrimination in the matter of emigration, immigration and travel, proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Council by resolutions 586 B and C (XX) reaffirmed its previous decision (resolution 545 D (XVIII)) that immigration should be excluded from the scope of the proposed study, which should deal with the "right of everyone to leave any country, including his own, and to return to his country, as provided in article 13, paragraph 2, of the Universal Declaration of Human Rights". During the discussion 33/ it was pointed out that the right of immigration was not included among the rights set forth in the Universal Declaration of Human Rights or in the draft covenants on human rights and that the question of immigration was therefore not a proper subject for study by the Sub-Commission. The view was also expressed that a study of discrimination in immigration would be incompatible with Article 2 (7) of the Charter. Others considered that both the Charter and the Universal Declaration stressed the need to eradicate discrimination and that there was no reason for not making a study of the subject, which was closely connected with emigration and travel.

27/ E/AC.7/SR.306, 307 and 308.

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

29/ E S C (XX), 890th mtg., para. 25; E/AC.7/SR.333.

30/ Ibid.

31/ E S C (XIX), 861st mtg., paras. 1-31.

32/ E/AC.7/SR.324-328.

33/ E/AC.7/SR.319 and 320.