

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 (2) in the *Reperory* and its *Supplements Nos. 1, 2 and 3*.

I. GENERAL SURVEY

A. Recommendations

2. During the period under review, the Economic and Social Council made recommendations on a number of issues in the field of human rights.¹ The subjects included many matters relating to the status of women, measures to be taken against nazism and racial intolerance, measures for the speedy implementation of international instruments against racial discrimination, punishment of war criminals and of persons who have committed crimes against humanity, International Year for Human Rights, revision of the work programme of the Commission on Human Rights in the field of human rights, and non-governmental organizations.

3. Continuing previous practice, recommendations have been addressed to "States Members of the United Nations and of the specialized agencies",² to "Member States",³ to "Governments of Member States",⁴ to "Governments of all States",⁵ and also just to "Governments".⁶ The Council has also addressed recommendations to its subsidiary organs such as the Commission on Human Rights⁷ and the Commission on the Status of Women,⁸ to the General Assembly, the Secretary-General and the specialized agencies.

4. The recommendations which were made to States Members of the United Nations and members of the specialized agencies dealt with such matters as those mentioned in paragraph 2 above.

5. Recommendations to the General Assembly included resolutions pertaining to the draft Declaration on the Elimination of Discrimination against Women⁹ and measures taken in implementation of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination,¹⁰ as well as resolutions on the International Year for Human Rights,¹¹ 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,¹² measures to be taken against nazism and racial intolerance,¹³ the draft international convention on the elimination of all forms of religious intolerance,¹⁴ the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery,¹⁵ capital punishment,¹⁶ measures for the speedy implementation of international instruments against racial discrimination,¹⁷ the question of the punishment of war criminals and of persons who have committed crimes against humanity,¹⁸ allegations regarding infringements of trade union rights,¹⁹ and measures for effectively combating racial discrimination, the policies of *apartheid* and segregation in southern Africa.²⁰

6. Recommendations to the specialized agencies continued to be addressed either generally to all or to specific agencies. The International Labour Organisation (ILO) was addressed on matters such as allegations regarding infringements of trade-union rights.²¹ The United Nations Educational, Scientific and Cultural Organization (UNESCO) was addressed on topics such as access of women to education.²² The ILO, UNESCO and WHO were addressed jointly on the question of slavery.²³ The ILO, UNESCO and "other organs of the United Nations system" were addressed jointly on participation of women in social and economic life within the framework of technological progress.²⁴ The ILO, FAO, UNESCO and WHO were addressed jointly on measures which the United Nations could adopt to eradicate all forms and practices of slavery and the slave-trade affecting the status of women.²⁵

7. In the majority of cases, the Council continued to use the word "invites" in its recommendations to the

¹See also this *Supplement*, under Article 55.

²E S C resolution 1395(XLVI).

³E S C resolutions 1146(XLI) and 1208(XLII).

⁴E S C resolution 1207(XLII).

⁵E S C resolution 1417(XLVI).

⁶E S C resolution 1396(XLVI).

⁷E S C resolution 1165(XLI).

⁸E S C resolution 1328(XLIV).

⁹E S C resolution 1131(XLI).

¹⁰E S C resolution 1146(XLI).

¹¹E S C resolution 1160(XLI).

¹²E S C resolution 1164(XLI).

¹³E S C resolutions 1211(XLII) and 1417(XLVI).

¹⁴E S C resolution 1233(XLII).

¹⁵E S C resolution 1237(XLII).

¹⁶E S C resolution 1243(XLII).

¹⁷E S C resolution 1244(XLII).

¹⁸E S C resolutions 1220(XLII) and 1416(XLVI).

¹⁹E S C resolution 1412(XLVI).

²⁰E S C resolution 1415(XLVI).

²¹E S C resolutions 1216(XLII) and 1412(XLVI).

²²E S C resolutions 1327(XLIV) and 1396(XLVI).

²³E S C resolution 1232(XLII).

²⁴E S C resolution 1394(XLVI).

²⁵E S C resolution 1331(XLIV).

specialized agencies. The word "requests" was also used,²⁶ and in at least two cases the word "suggests".²⁷ Recommendations to non-governmental organizations concerned implementation of the Declaration on the Elimination of Discrimination against Women,²⁸ measures which the United Nations could adopt to eradicate all forms and practices of slavery and the slave-trade affecting the status of women,²⁹ the question of slavery and the slave-trade,³⁰ the question of the realization of the economic and social rights³¹ and family planning and the status of women.³²

B. Studies and reports

8. During the period under review, the Council continued to make or initiate studies and reports. It adopted further recommendations³³ regarding the mat-

²⁶E S C resolution 1412(XLVI).

²⁷E S C resolutions 1216(XLII) and 1394(XLVI).

²⁸E S C resolution 1325(XLIV).

²⁹E S C resolution 1331(XLIV).

³⁰E S C resolution 1419(XLVI).

³¹E S C resolution 1421(XLVI).

³²E S C resolution 1326(XLIV).

³³E S C resolution 1230(XLII).

ter of consideration and access to the material submitted by States Members of the United Nations in connexion with the triennial reports on human rights.³⁴

9. Studies and reports during the period concerned the status of women,³⁵ slavery,³⁶ trade union rights,³⁷ racial discrimination³⁸ and a United Nations High Commissioner for Human Rights.³⁹

10. The requests for studies and reports were addressed in most cases to the Secretary-General and also to Member States, subsidiary organs of the Council, the specialized agencies and non-governmental organizations in consultative status.

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

³⁴E S C resolution 1074 C (XXXIX).

³⁵E S C resolutions 1325(XLIV), 1326(XLIV) and 1328(XLIV).

³⁶E S C resolutions 1330(XLIV) and 1331(XLIV).

³⁷E S C resolutions 1216(XLII) and 1302(XLIV).

³⁸E S C resolution 1235(XLII).

³⁹E S C resolution 1238(XLII).

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

11. At the forty-second session of the Council, a number of representatives questioned its competence and that of its subsidiary bodies to take a decision as a quasi-judicial body concerning the facts brought to their attention.⁴⁰ The question arose in connexion with the Council's consideration of accusations contained in a complaint by the World Federation of Trade Unions (WFTU) relating to allegations regarding infringements of trade union rights in South Africa (see Section F below).

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

12. On the recommendation of the Commission on Human Rights, the Council, at its forty-second session,⁴¹ authorized the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine information relevant to gross violations of human rights and fundamental freedoms, as exemplified by the policy of *apartheid* as practised in the Republic of South Africa and in the Territory of South West Africa under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa,

⁴⁰E S C (XLII), 1465th mtg., paras. 32, 43 and 47.

⁴¹E S C resolution 1235(XLII).

and to racial discrimination as practised notably in Southern Rhodesia, contained in the communications listed by the Secretary-General pursuant to Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959.

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

13. At its forty-second session, the Council adopted a resolution entitled "Allegations regarding infringements of trade-union rights".⁴² In the course of the discussion several representatives expressed the view that under the terms of Council resolution 277(X) consideration of allegations regarding infringements of trade-union rights in the Republic of South Africa fell directly within its jurisdiction.⁴³ Resolution 277(X) provided that in the event of allegations regarding infringements of trade-union rights, the United Nations would accept the assistance of the ILO, and particularly of the Fact-Finding and Conciliation Commission on Freedom of Association established by the ILO for examining such allegations. Where a State which was not a member of the ILO was concerned, its consent must first be obtained. If it did not give its consent, the Economic and Social Council gave consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case.

14. As South Africa had refused its consent to the referral of the allegation to the ILO Fact-Finding and Conciliation Commission on Freedom of Association, the matter had been brought before the Council in conformity with the provisions of resolution 277(X).

15. At its forty-sixth session, the Council adopted resolution 1412(XLVI) which *inter alia* authorized the *Ad Hoc* Working Group of Experts, established originally by resolution 2(XXIII) of the Commission on

⁴²E S C resolution 1216(XLII).

⁴³E S C (XLII), 1463rd mtg., paras. 1, 7, 14 and 22; 1465th mtg., paras. 32 and 35.

Human Rights and whose mandate was more recently renewed by resolution 21(XXV) of that Commission, to continue its investigations into the infringements of trade-union rights in the Republic of South Africa, Namibia and Southern Rhodesia, in co-operation with the Government of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, and the ILO, taking due account of the latter's primary responsibility in the matter of investigation in the rebel colony of Southern Rhodesia.

16. In the discussion that followed the adoption of this proposal a number of representatives expressed their reservations⁴⁴ on the legality of the proposal in view of the fact that both the United Kingdom and Portugal were members of the ILO.

****G. Human rights and domestic jurisdiction**

H. The question of recommendations to non-member States

17. During the period under review, the General Assembly, while making recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all, continued to refer to "Governments",⁴⁵ "all Governments",⁴⁶ "all States"⁴⁷ and "Governments of all countries".⁴⁸

⁴⁵G A resolutions 2434(XXIII), 2497(XXIV) and 2543(XXIV).

⁴⁶G A resolutions 2547(XXIV) and 2588(XXIV).

⁴⁷G A resolutions 2142(XXI), 2144(XXI), 2331(XXII), 2438(XXIII), 2442(XXIII), 2444(XXIII), 2544(XXIV) and 2545(XXIV).

⁴⁸G A resolution 2217 B (XXI).

⁴⁴E S C (XLVI), 1601st mtg., paras. 26, 28 and 34.