

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 the present study is similar to that of the studies of Article 62 (2) in the *Repertory* and its *Supplements Nos. 1 to 5*. There was no new development requiring discussion under the headings A, B and H in the analytical summary of practice.

I. GENERAL SURVEY

2. During the period covered by the present *Supplement*, the Economic and Social Council made no specific reference to its role of formulation of policy and of coordination of the activities of the United Nations system in the field of human rights. Nevertheless, in its resolution on the revitalization of the Council,¹ the Council recalled that it was the principal organ of the United Nations under the Charter in the economic and social fields and, for that purpose, (a) should assist in the preparation of the work of the General Assembly in the economic, social and related fields through the drawing up of suggestions, for consideration by the Assembly, regarding the latter's documentation and organization of work, and of recommendations for action by the Assembly on substantive issues;² and (b) might formulate appropriate conclusions and recommendations thereon addressed to the General Assembly, States Members of the United Nations, and organs, organizations and bodies of the United Nations system concerned.³

A. Recommendations

3. During the period under review, the Council made many recommendations on a variety of subjects in the field of human rights.⁴ Those subjects included matters relating to action to combat racism and racial discrimination, prevention of disability, rights of deaf-blind persons, adoption and foster placement of children, national institutions for the promotion and protection of human rights, the status of women, a Code of Medical Ethics, the elimination of all forms of intolerance and of discrimination based on religion or belief, torture and other cruel, inhuman or degrading treatment or punishment, the activities of transnational corporations in southern Africa, the human rights of all migrant workers, the development of public information activities in the field of human rights, the

conditions in which women were detained, and summary or arbitrary executions.

4. As in the past, the Council addressed recommendations primarily to the Secretary-General, but also to the General Assembly, all States or all Governments, States Members of the United Nations, specialized agencies and international organizations, non-governmental organizations, its subsidiary organs such as the Commission of Human Rights, and the Subcommittee on Prevention of Discrimination and Protection of Minorities.

5. Some recommendations to the General Assembly focused on subjects relating to violations of human rights in southern Africa,⁵ national institutions for the promotion and protection of human rights,⁶ the International Year of the Child,⁷ the programme of action for the second half of the United Nations Decade for Women: Equality, Development and Peace,⁸ the World Assembly on the Elderly,⁹ the question of human rights in Chile,¹⁰ the social aspects of the development activities of the United Nations,¹¹ the question of a draft code of medical ethics,¹² the proposal to declare an international year of shelter for the homeless,¹³ the International Year of Peace and International Day of Peace,¹⁴ the role of women in economic development,¹⁵ the preparations for the 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women,¹⁶ the Convention on the Elimination of All

⁵E S C decision 1979/33.

⁶E S C decision 1979/38.

⁷E S C resolution 1979/57.

⁸E S C resolution 1980/6.

⁹E S C resolution 1980/26.

¹⁰E S C decision 1980/129.

¹¹E S C resolution 1981/24.

¹²E S C resolution 1981/27.

¹³E S C resolution 1981/69 B.

¹⁴E S C resolution 1982/15.

¹⁵E S C resolution 1982/19.

¹⁶E S C resolution 1982/26.

¹E S C resolution 1982/50.

²*Ibid.*, para.1 (b).

³*Ibid.*, para.1 (d).

⁴See also the present *Supplement*, under Article 55.

Forms of Discrimination against Women,¹⁷ and the concerns of women within the United Nations system.¹⁸

6. Other recommendations to the General Assembly included a draft resolution on the implementation of the Programme for the Decade for Action to Combat Racism and Racial Discrimination,¹⁹ a draft resolution on the implementation of the Declaration on Social Progress and Development,²⁰ a Declaration on the Rights of Deaf-Blind Persons,²¹ a draft declaration²² on social and legal principles relating to adoption and foster placement of children nationally and internationally,²³ a draft declaration on international legal protection of the human rights of individuals who were not citizens of the country in which they live,²⁴ a draft declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief,²⁵ a draft resolution on the United Nations Voluntary Fund for Victims of Torture,²⁶ a draft resolution on a global strategy for health for all by the year 2000,²⁷ a draft resolution on the Second World Conference to Combat Racism and Racial Discrimination,²⁸ a draft convention against torture and other cruel, inhuman or degrading treatment or punishment,²⁹ and a draft resolution on the International Year of Shelter for the Homeless.³⁰

7. Recommendations to States were addressed to States Members of the United Nations concerning, inter alia, rights of women,³¹ racism and racial discrimination,³² the welfare of migrant workers and their families,³³ the question of ageing,³⁴ the prevention of crime and the treatment of offenders,³⁵ traffic in persons and exploitation of the prostitution of others,³⁶ activities of transnational corporations,³⁷ questions related to development,³⁸ and the treatment of prisoners or detained persons.³⁹ Recommendations were also addressed to all States concerning the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations,⁴⁰ racism and racial

discrimination,⁴¹ the status of women,⁴² the social aspects of the access to culture,⁴³ the activities of transnational corporations,⁴⁴ the protection of the rights of children and parents in cases of removal or retention of children,⁴⁵ and discrimination against women.⁴⁶ Recommendations to Governments concerned, inter alia, the International Year of Disabled Persons,⁴⁷ human rights violations and disabled persons,⁴⁸ public information activities in the field of human rights,⁴⁹ the status of women,⁵⁰ the rights of the child,⁵¹ summary or arbitrary executions⁵² and the question of ageing.⁵³

8. Recommendations were also jointly made to several addressees, notably recommendations regarding the social aspects of the access to culture addressed to all nations or to all Governments and other public and private institutions, both national and international,⁵⁴ to all home countries of transnational corporations or to all anti-apartheid movements, religious institutions and bodies, trade unions, universities and other institutions which were shareholders of transnational corporations operating in South Africa and Namibia, in the resolution regarding the activities of transnational corporations in southern Africa;⁵⁵ to all Governments, national and international organizations, both governmental and non-governmental, the mass media, educational bodies and all individuals concerned, in the resolution relative to elderly women and the World Assembly on Ageing;⁵⁶ to women's organizations worldwide, in the resolution relating to women and children under apartheid;⁵⁷ to the Israeli occupation authorities in the resolution relative to assistance to the Palestinian people;⁵⁸ and to States, including a recommendation to militarily significant States regarding the implementation of the objectives of the United Nations Decade for Women.⁵⁹

9. Recommendations were made to specialized agencies in general, on the programme of action for the second half of the United Nations Decade for Women,⁶⁰ on the implementation of the International Covenant on Economic, Social and Cultural Rights⁶¹ and on the promotion of opportunities for young women.⁶² The Council also

¹⁷E S C resolution 1984/8.

¹⁸E S C resolution 1984/12.

¹⁹E S C resolutions 1979/3, 1980/7 and 1982/31.

²⁰E S C resolution 1979/15.

²¹E S C decision 1979/24.

²²E/CN.5/574.

²³E S C resolutions 1979/28 and 1981/18.

²⁴E S C resolution 1980/29.

²⁵E S C resolution 1981/36.

²⁶E S C resolution 1981/39.

²⁷E S C resolution 1981/61.

²⁸E S C resolution 1982/32.

²⁹E S C decision 1984/134.

³⁰E S C resolution 1984/57 B.

³¹E S C resolutions 1980/37, 1980/42, 1981/13, 1982/22, 1982/23, 1982/26, 1982/27, 1984/11, 1984/15 and 1984/19.

³²E S C resolution 1980/7.

³³E S C resolution 1981/21.

³⁴E S C resolution 1981/23.

³⁵E S C resolution 1982/29.

³⁶E S C resolution 1983/30.

³⁷E S C resolutions 1982/69 and 1984/53.

³⁸E S C resolutions 1983/11 and 1983/23.

³⁹E S C resolutions 1984/19 and 1984/47.

⁴⁰E S C resolutions 1979/50 and 1981/54.

⁴¹E S C resolution 1980/7.

⁴²E S C resolutions 1982/18 and 1983/1.

⁴³E S C resolution 1981/17.

⁴⁴E S C resolutions 1979/75 and 1980/59.

⁴⁵E S C resolution 1982/39.

⁴⁶E S C resolution 1983/1.

⁴⁷E S C resolution 1981/22.

⁴⁸E S C resolution 1984/26.

⁴⁹E S C resolution 1980/30.

⁵⁰E S C resolutions 1980/34, 1980/37, 1980/41, 1982/24, 1983/28, 1984/17 and 1984/18.

⁵¹E S C resolutions 1980/62, 1981/56 and 1982/51.

⁵²E S C resolutions 1982/35, 1983/36 and 1984/35.

⁵³E S C resolution 1983/21.

⁵⁴E S C resolution 1981/17.

⁵⁵E S C resolution 1981/86.

⁵⁶E S C resolution 1982/23.

⁵⁷E S C resolution 1982/24.

⁵⁸E S C resolution 1983/43.

⁵⁹E S C resolution 1984/16.

⁶⁰E S C resolution 1980/3.

⁶¹E S C resolution 1984/9.

⁶²E S C resolution 1984/15.

addressed recommendations to certain specialized agencies, notably: to the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and other specialized bodies concerned, in the resolution on the welfare of migrant workers and their families;⁶³ to UNESCO and ILO, in the resolution on the development of public information activities in the field of human rights;⁶⁴ and to ILO, FAO, UNESCO and WHO, in the resolution on advisory services in the field of human rights.⁶⁵

10. The Council also addressed recommendations to specialized agencies jointly with other actors. For example, recommendations were addressed to the specialized agencies concerned and non-governmental organizations, requesting them to coordinate their activities with those of the United Nations in order to promote effective measures for the prevention of disability and the rehabilitation of disabled persons, inter alia, by providing assistance to developing countries.⁶⁶ The Council also addressed a recommendation to UNICEF, UNHCR, ILO and WHO in a resolution on the suppression of the traffic in persons and of the exploitation of the prostitution of others.⁶⁷ It also requested, in order to enable the Commission on Human Rights to carry out the study requested by the General Assembly in its resolution 33/54, those specialized agencies and other organs and bodies within the United Nations system and related to the United Nations which were, according to their explicit mandates, concerned with the protection and promotion of human rights and fundamental freedoms, to provide the Secretary-General with a short survey of their human rights activities and programmes.⁶⁸ Finally, the Council requested the United Nations and its organs and specialized agencies, as well as all national, regional and international women's organizations, to extend their help, both moral and material, to the Palestinian women and their organizations and institutes.⁶⁹

11. In accordance with its previous practice, the Council addressed non-governmental organizations in general, in most cases in combination with other addressees. In one instance, it specifically addressed non-governmental organizations having consultative status with the Economic and Social Council to submit their views, in writing, on their contributions to a Conference,⁷⁰ and on possible issues and themes for the Conference, to the Centre for Social Development and Humanitarian Affairs, for consolidated presentation to the preparatory body.⁷¹ The recommendations addressed to the non-governmental organizations in general or jointly with other institutions concerned the prevention of disability,⁷² implementation of the Programme for the Decade for Action to Combat Racism

and Racial Discrimination,⁷³ the activities of the Committee on Non-Governmental Organizations⁷⁴ and the question of slavery and the slave trade in all their practices and manifestations.⁷⁵

B. Studies and reports

12. Within the framework of the implementation of the International Covenant on Economic, Social and Cultural Rights, the Council adopted the methods of work of the Sessional Working Group on the Implementation of the International Covenant on Economic, Social and Cultural Rights.⁷⁶ Here it was set out that:

(a) The Working Group should assist the Economic and Social Council in the consideration of the reports submitted by States parties to the International Covenant on Economic, Social and Cultural Rights in conformity with article 16 of the Covenant. The Council also requested that the Working Group also consider the reports submitted by States parties to the Covenant in accordance with the programme established by the Council in its resolution 1988 (LX), under which the States parties would furnish in biennial stages the reports referred to in article 16 of the Covenant. Representatives of the reporting States also were entitled to be present at the meetings of the Working Group when their reports were examined, to make statements on the reports submitted by their States and answer questions which might be put to them by the members of the Working Group;

(b) The Working Group was also entrusted with the task of considering the reports of the specialized agencies, submitted to the Council in accordance with article 18 of the Covenant and the programme established under Council resolution 1988 (LX), on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities. The Working Group might make appropriate recommendations in its report to the Council to the effect that the Secretary-General should send reminders to States parties from which reports had not been received.⁷⁷

13. In its subsequent resolutions and decisions relating to the work of the Working Group,⁷⁸ the Council adopted a number of measures affecting the reporting system laid down in the Covenant, notably that: (a) a list of States parties to the Covenant should be annexed to the report of the Working Group on each session, together with an indication of the status of submission of reports for consideration by the Working Group;⁷⁹ (b) the representatives of the specialized agencies should make general statements on matters relating to their field of competence at the end of the discussion by the Working Group of the report of each State party to the Covenant, and States parties presenting reports to the Working Group should be free to respond to, or take

⁶³E S C resolution 1979/12.

⁶⁴E S C resolution 1980/30.

⁶⁵E S C resolution 1984/32.

⁶⁶E S C resolution 1979/14.

⁶⁷E S C resolution 1983/30.

⁶⁸E S C resolution 1979/36.

⁶⁹E S C resolution 1982/18.

⁷⁰The 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women.

⁷¹E S C resolution 1982/26.

⁷²E S C resolution 1979/14.

⁷³E S C resolution 1980/7.

⁷⁴E S C resolution 1981/44.

⁷⁵E S C resolution 1984/34.

⁷⁶E S C resolution 1979/43.

⁷⁷Ibid.

⁷⁸In its decision 1981/158 the Council decided to rename the Working Group the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

⁷⁹E S C decision 1981/158, para. 8.

into account, the general comments made by specialized agencies;⁸⁰ (c) at the end of each of its sessions, the Group of Experts should submit to the Council a report on its activities and should make suggestions and recommendations of a general nature based on its consideration of reports submitted by States parties to the Covenant and by the specialized agencies, in order to assist the Council in fulfilling, in particular, its responsibilities under articles 21 and 22 of the Covenant;⁸¹ (d) States parties to the Covenant, in preparing their reports, were expected to comply with the guidelines established by the Secretary-General concerning the form and content of reports and to be mindful of the importance of submitting their reports 12 weeks before the session of the Group of Experts in order to permit processing by the Secretariat and adequate study by the members of the Group of Experts.⁸²

14. Concerning the *Yearbook on Human Rights*, the Council decided that the part of the *Yearbook* devoted to national developments should consist of extracts from reports made by States under such instruments as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid, as well as from the periodic reports submitted by States under the reporting procedure established under Economic and Social Council resolution 1074 C (XXXIX).⁸³ The reporting procedure established under resolution 1074 C (XXXIX) was cancelled by the Council in its decision 1981/151 on the basis of General Assembly resolution 35/209 and Commission on Human Rights decision 10 (XXXVII), providing that resources for activities considered obsolete, of marginal usefulness or ineffective should be redeployed to finance new United Nations activities.

15. Concerning the status of women, the Council decided to continue the existing integrated reporting system on the status of women as the means of monitoring the realization during 1980-1985 of the World Plan of Action for the Implementation of the Objectives of the International Women's Year and of the programme of action for the second half of the United Nations Decade for Women.⁸⁴

16. The Council also decided that the Committee on Crime Prevention and Control should report directly to it, and that the Committee would send its report to the Commission for Social Development and, where appropriate, to other relevant United Nations organs.⁸⁵

17. Other reports and studies were related to the welfare of migrant workers and their families,⁸⁶ questions relating to youth,⁸⁷ the question of the human rights of all persons subjected to any form of detention or imprisonment,⁸⁸ the promotion and encouragement of human rights and fundamental freedoms,⁸⁹ the control and limitation of documentation,⁹⁰ the regional and national dimensions of the right to development as human rights,⁹¹ the South African Government's legitimacy in view of its policy of apartheid,⁹² the exploitation of prostitution,⁹³ the status of women,⁹⁴ racism and racial discrimination,⁹⁵ public information activities in the field of human rights,⁹⁶ trade union rights in the Republic of South Africa,⁹⁷ the question of slavery and the slave trade in all their practices and manifestations,⁹⁸ the exploitation of child labour,⁹⁹ the new international economic order and the promotion of human rights,¹⁰⁰ the question of ageing,¹⁰¹ human rights and mass exoduses,¹⁰² the problem of discrimination against indigenous populations,¹⁰³ summary or arbitrary executions,¹⁰⁴ the question of the violation of human rights in the occupied Arab territories, including Palestine,¹⁰⁵ the rights of disabled persons,¹⁰⁶ crime prevention and control,¹⁰⁷ the special problems which the developing countries faced in their efforts to achieve economic, social and cultural rights,¹⁰⁸ the question of the prevention and punishment of the crime of genocide,¹⁰⁹ discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country,¹¹⁰ and to the current dimensions of the problems of intolerance and of discrimination on grounds of religion and belief.¹¹¹

⁸⁶E S C resolutions 1979/12 and 1979/13.

⁸⁷E S C resolutions 1979/16 and 1979/27.

⁸⁸E S C resolution 1979/34 and decisions 1980/124 and 128.

⁸⁹E S C resolution 1979/36.

⁹⁰E S C resolution 1979/41.

⁹¹E S C decision 1979/29 and decision 1980/130.

⁹²E S C decision 1979/33.

⁹³E S C resolutions 1980/4 and 1982/20.

⁹⁴See, for example, E S C resolutions 1980/6 and 1981/12.

⁹⁵E S C resolutions 1980/28 and 1984/24.

⁹⁶E S C resolution 1980/30.

⁹⁷E S C resolutions 1980/33, 1981/41 and 1982/40.

⁹⁸E S C decisions 1980/123 and 1982/129 and E S C resolution 1984/34.

⁹⁹E S C decision 1980/125.

¹⁰⁰E S C decisions 1980/126 and 1983/140.

¹⁰¹E S C resolutions 1981/23 and 1983/21.

¹⁰²E S C decision 1981/145.

¹⁰³E S C resolution 1982/34.

¹⁰⁴E S C resolutions 1982/35, 1983/24 and 1983/36.

¹⁰⁵E S C decision 1982/127.

¹⁰⁶E S C resolutions 1983/19 and 1984/26.

¹⁰⁷E S C resolutions 1983/25, 1984/45 and 1984/48.

¹⁰⁸E S C resolution 1983/31.

¹⁰⁹E S C resolution 1983/33.

¹¹⁰E S C resolution 1984/29.

¹¹¹E S C resolution 1984/39.

⁸⁰*Ibid.*, para. 9.

⁸¹E S C resolution 1982/33.

⁸²E S C resolution 1983/41.

⁸³E S C resolution 1979/37.

⁸⁴E S C resolution 1980/38.

⁸⁵E S C resolution 1983/25.

18. The Council also initiated reports and studies on the situation of human rights in several countries, which it entrusted to special rapporteurs, special envoys or special representatives, notably for Chile,¹¹² Bolivia,¹¹³ Guatemala,¹¹⁴ Poland,¹¹⁵ the Islamic Republic of Iran,¹¹⁶ Equatorial Guinea,¹¹⁷ Afghanistan¹¹⁸ and El Salvador.¹¹⁹

19. Requests for reports and studies were addressed in most cases to the Secretary-General, but also to special rapporteurs, specialized agencies, the Subcommission on Prevention of Discrimination and Protection of Minorities, the Committee on Crime Prevention and Control, the Centre for Human Rights and non-governmental organizations.

¹¹²E S C decision 1979/32.

¹¹³E S C decision 1981/148.

¹¹⁴E S C decisions 1982/135, 1983/148 and 1984/137.

¹¹⁵E S C decision 1983/145.

¹¹⁶E S C decisions 1983/147 and 1984/138.

¹¹⁷E S C resolution 1984/36.

¹¹⁸E S C resolution 1984/37.

¹¹⁹E S C decision 1984/136.

C. Procedures for the handling of communications concerning human rights

20. The major procedural change in the handling of communications concerning human rights during the period under review was the re-establishment of the procedure for dealing with communications on the status of women empowering the Commission on the Status of Women to consider confidential and non-confidential communications on the status of women.¹²⁰ This invalidated the provisions of Council decision 86 (LVIII) in which the Council had invited the Commission to reconsider its existing authority to deal with communications relating to the status of women; and enlarged the provisions of its resolution 1980/39, under which the Commission on the Status of Women was entitled to receive communications relating to the status of women but had no mandate to act upon them.

¹²⁰See paras. 36 to 44 of this study and Article 55 (c) paras ... (study still under review).

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

21. The power of the Council to conduct inquiries or investigations in matters relating to human rights was not challenged. However, questions arose concerning the definition of the activities of the Working Group on Enforced or Involuntary Disappearances and also, during the discussion on the situation of human rights in Chile, concerning the question of selectivity.

1. WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

22. Regarding the question of missing or disappeared persons, the Commission on Human Rights decided to establish for a period of one year a working group consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons. It further decided that the working group should seek and receive information from governmental organizations and other reliable sources, and also invited the working group, in establishing its working methods, to bear in mind the need to be able to respond effectively to information that came before it and to carry

out its work with discretion.¹²¹ The Council extended annually the mandate of the Working Group¹²²

23. During the debates linked to the adoption of Council decision 1980/128 on the establishment of the Working Group,¹²³ one delegation suggested, concerning the question of disappearances, that a posture of accusing Governments should be avoided. Instead, the problem of disappearances should be considered on a universal basis; methods that would be of assistance in documenting cases of disappeared persons should be developed; and procedures should be flexible and provide for urgent action. The international community should avoid considering the question of missing and disappeared persons from a partisan point of view and should seek to identify the various aspects of the phenomenon of disappearances and the most appropriate type of action.¹²⁴ It was also proposed that the Working Group should act in all cases on the basis of reliable information from responsible sources and should exercise discretion. It was important, in examining the question of disappearances, that the Working Group should analyse the context of the circumstances and the reasons which led to them and that it should be able to recommend to the international community actions which would help to solve the problem. It was further stated that the Working Group should not act contrary to the wishes of the States concerned, should limit itself to the procedures and practices which had been established in that field and should work on the basis of consensus.¹²⁵ Governments concerned, it was said, should at

¹²¹C H R resolution 20 (XXXVI).

¹²²E S C decisions 1981/139, 1982/131, 1983/141 and 1984/135.

¹²³E/1980/C.2/SR.19.

¹²⁴Ibid., para. 33.

¹²⁵E/1981/C.2/SR.15, para. 50 and E/1981/C.2/SR.19, para. 1.

least allow private organizations and individuals within their borders to assist the group of experts in its undertaking.¹²⁶

2. SITUATION OF HUMAN RIGHTS IN CHILE

24. Concerning the situation of human rights in Chile, the Council endorsed a decision of the Commission on Human Rights¹²⁷ authorizing the appointment of a Special Rapporteur on the situation of human rights in Chile as well as the appointment of two experts in their individual capacity to study the question of the fate of missing and disappeared persons in Chile.¹²⁸ In its subsequent resolutions, the Council extended annually the mandate of the Special Rapporteur.¹²⁹

25. In the discussion in the Second (Social) Committee of the Council, a number of delegations supported the above-mentioned decision of the Commission on Human Rights¹³⁰ and expressed the hope that the Special Rapporteur on the situation of human rights in Chile and the two experts would proceed in accordance with General Assembly resolution 33/175 and fully exercise their mandate.¹³¹

26. Opposite views were expressed by the representative of Chile, who pointed out that his country considered General Assembly resolution 33/175 and Commission on Human Rights resolution 11 (XXXV), both of which adopted without the consent of the Government of Chile, to be unlawful, discriminatory and unjust. He further noted that the procedures which were established by the resolutions were utterly lacking in legal or moral force, since they had no legal basis in the United Nations system and were not accepted by Chile, and his country would not accept any ad hoc or *ad casum* procedure, because such an approach vitiated the principle of the legal equality of States laid down in the Charter of the United Nations.¹³²

27. The protest of the representative of Chile concerning the question of equality of States found an echo among certain other delegations who expressed their opinion about the selective methods used by the Commission on Human Rights once the Commission decided to place a country under its control. It was felt that some groups were still inclined to concern themselves excessively with a few isolated cases and at the same time to deny the existence of other, sometimes even more serious, cases of violation of human rights. Everyone, it was said, should make an effort to avoid selectivity and to apply objective criteria, irrespective of the ideological, geographical or political position of any State which systematically and consistently failed to respect the human rights of its citizens.¹³³ The remark was also made that the time had come to decide precisely how, and by what procedures and criteria, allegations of violations of human rights should be dealt with. This was urgently necessary if the international

¹²⁶E/1980/C.2/SR.22, para. 20.

¹²⁷Commission on Human Rights resolution 11 (XXXV).

¹²⁸E S C decision 1979/32.

¹²⁹E S C decisions 1980/129, 1981/138, 1982/132, 1983/149 and 1984/140.

¹³⁰E/1979/36.

¹³¹E/1979/C.2/SR.22, para. 28.

¹³²E/1979/C.2/SR.25, para. 7.

¹³³E/1979/C.2/SR.22, para. 3.

community was to maintain its confidence in the ability of the United Nations to provide multilateral procedures applicable to all and accessible to all.¹³⁴

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

28. During the period under review, the power of the Council to make recommendations on a number of subjects was disputed. For example, objections arose during the discussions on the proposal to draft an international convention on migrant workers. Similar objections were voiced during the discussions on administrative and budgetary issues in connection with a resolution on enforced or involuntary disappearances, as well as during the debates relative to the adoption of a decision recommending a study of the South African Government's legitimacy.

1. RIGHTS OF MIGRANT WORKERS

29. On the basis of General Assembly resolution 33/163 concerning the rights of migrant workers, a draft resolution was submitted to the Council¹³⁵ by the Commission for Social Development in which the Secretary-General would be requested to communicate to Member States at the thirty-fourth session of the General Assembly the results of the consultations which the Assembly requested him to undertake in order to explore the possibility of drawing up an international convention on the rights of migrant workers.

30. The competence of the Council in the matter was challenged by several delegations, who stated that the decision to elaborate such a convention must be taken by the General Assembly, not by the Council, in accordance with the provisions of resolution 33/163. ILO, it was said, was the appropriate forum for the discussion of migrant workers and for drafting any new international instruments for which a need might develop.¹³⁶ Despite those objections, the draft was adopted by a large majority in the Council.¹³⁷

2. POWER OF THE COUNCIL TO MAKE RECOMMENDATIONS ON ADMINISTRATIVE AND BUDGETARY QUESTIONS

31. The power of the Council was contested when the Second (Social) Committee discussed the administrative and budgetary implications of Commission on Human Rights resolution 10 (XXXVII) concerning enforced or involuntary disappearances. In its report on its thirty-seventh session, the Commission decided to note, without approving, the administrative and financial implications relating to its resolution 10 (XXXVII).¹³⁸ A proposal regarding the implementation of the resolution aimed at the recruitment of supplementary staff to assist the Working Group on Enforced or Involuntary Disappearances in preparing the report on its

¹³⁴E/1979/C.2/SR.21, para. 10.

¹³⁵E/1979/C.2/L.5.

¹³⁶E/1981/C.2/SR.18, para. 3.

¹³⁷E S C resolution 1979/13.

¹³⁸E S C (1981), Suppl. No. 5, para. 209.

work to the Commission at its thirty-eighth session, to carry out initial screening and classification of information, to analyse and prepare the information for the Working Group and to maintain correspondence with those involved in the procedure.¹³⁹

32. One delegate opposed to the recruitment as outlined in the above proposal stated that such staff as were required to carry out the extremely important tasks facing the Working Group had to be chosen from among the permanent officials of the Secretariat. The kind of work that was required was far too delicate to be entrusted to persons recruited solely for the duration of the mandate of the Working Group. Those persons might be politically motivated and fail to act with all the discretion that was required to protect persons providing information and to limit the dissemination of information provided by Governments. According to that delegate, the Commission had appointed experts to the Working Group whose known honesty and extensive knowledge equipped them ideally to handle the type of information to which the mandate of the Group would give them access and it was unacceptable that the Organization should recruit outsiders to assist the Group.¹⁴⁰ He therefore proposed that the Council should take note of the proposals regarding financial implications, with the exception of the part concerning the recruitment of temporary staff.¹⁴¹

33. The question turned upon whether the Economic and Social Council and the Commission on Human Rights were competent to deliver their views on administrative and budgetary issues. The Director of the Division for Human Rights stated the view that, on one hand, the Council as well as the Commission were required to express themselves on the definition of mandates but, although they might wish to discuss financial and administrative arrangements, the decision in such matters belonged to the budgetary organs of the United Nations, and specifically to the Advisory Committee on Administrative and Budgetary Questions and to the Fifth Committee of the General Assembly. The Council accordingly always took note of financial implications without approving them. On the other hand, the Division for Human Rights had already redeployed members of its permanent staff, and it would be impossible to cope with all the work required under the mandate of the Working Group without the assistance of temporary staff. The Director also drew attention to the United Nations budgeting system concerning extra manpower and the demands on zero-growth budget.¹⁴²

3. STUDY ON THE SOUTH AFRICAN GOVERNMENT'S LEGITIMACY

34. In the course of discussions concerning a draft resolution addressing the preparation of a study of the South African Government's legitimacy in view of its policy of apartheid,¹⁴³ certain delegations, despite support by several

others, disputed the principle underlying the study and denied the competence of the Council on the matter. It was stated that a Government's legitimacy was not determined by the policy it was pursuing,¹⁴⁴ the abhorrence of that policy or the compliance of that policy with United Nations resolutions.¹⁴⁵ It was further stated that it was not within the competence of economic organs of the United Nations to discuss questions of legitimacy.¹⁴⁶ The draft decision, nevertheless, was adopted by a large majority: 37 votes in favour, 4 against and 9 abstentions.¹⁴⁷

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

35. The Council took a general decision concerning the "1503" procedure, according to which States had the right to participate in the entire discussion of any situation being considered under Council resolution 1503 (XLVIII) in which they were concerned, and to be present during the adoption of the final decision taken regarding that situation.¹⁴⁸ It also took decisions regarding communications on the status of women and with the use of the confidential or the public procedure under resolution 1503 (XLVIII).

1. COMMUNICATIONS CONCERNING THE STATUS OF WOMEN

36. During the period under review, the Council took decisions regarding communications concerning the status of women. In 1980, it recalled that the Commission on the Status of Women was entitled to receive communications relating to the status of women but had no mandate to act upon them,¹⁴⁹ and requested: (a) the Commission on Human Rights to submit to it, at its first regular session of 1982, its views on how communications relating to the status of women should be handled, taking into account the procedures of the Commission; (b) the Commission on the Status of Women to consider at its twenty-ninth session procedures for handling communications relating to the status of women and to submit its views to the Council at its first regular session of 1982; and (c) the Secretary-General to assist the Council in its consideration of the matter of communications concerning the status of women by providing background information regarding existing procedures on communications within the United Nations system.¹⁵⁰

37. For the adoption of resolution 1980/39, the Second (Social) Committee of the Council had before it draft resolution (X),¹⁵¹ submitted by the Commission on the Status of Women stating, *inter alia*:

¹⁴⁴E/1979/C.2/SR.19, para. 22.

¹⁴⁵E/1979/C.2/SR.25, para. 9.

¹⁴⁶E/1979/C.2/SR.25, para. 11.

¹⁴⁷E S C decision 1979/33.

¹⁴⁸E S C decision 1980/135.

¹⁴⁹E S C resolution 1980/39.

¹⁵⁰*Ibid.*

¹⁵¹E/1980/15.

¹³⁹E/1981/C.2/SR.18, para. 54.

¹⁴⁰*Ibid.*

¹⁴¹*Ibid.*, para. 55.

¹⁴²E/1981/C.2/SR.18, paras. 54 to 59.

¹⁴³E/1979/C.2/SR.20, paras. 18 and 32 and E/1979/C.2/SR.22, para. 76.

Seventh preambular paragraph

"... the need for a United Nations body concerned with all aspects of women's rights to provide international recourse for individuals, organizations and States concerned with the status of women"

Eighth preambular paragraph

"... the desirability of strengthening the Commission on the Status of Women to deal with communications relating to the political, civil, economic, social and cultural rights and the status of women in all aspects"

And in the operative paragraph, a request to the Secretary-General "... to appoint an ad hoc group of experts ... to study procedures for dealing with communications relating to the status of women and to report to the Commission on the Status of Women at its twenty-ninth session."¹⁵²

38. An amendment of draft resolution (X)¹⁵³ was submitted to the Committee which suggested, inter alia, replacing the eighth preambular paragraph by the following provision:

"Recognizing the necessity of taking fully into account the civil, political, economic, social and cultural rights of women",

and replacing the operative paragraph by:

"1. Requests the Secretary-General to transmit to the Commission on Human Rights, for its consideration, the communications received in connection with the status of women;

"2. Recommends that the Commission on Human Rights, in its consideration of such communications, should take into account the special situation of women who still do not enjoy the same rights as men in the civil, political, economic, social and cultural fields."¹⁵⁴

39. In the course of discussions,¹⁵⁵ the representatives who supported draft resolution (X) submitted by the Commission on the Status of Women¹⁵⁶ stated that the machinery of the Commission on Human Rights was inadequate to deal with all cases of violations of human rights specifically relating to women. It would involve a new and large burden on which the Commission on Human Rights had not been consulted and which went beyond its existing mandate. Communications concerning women, it was said, had specific characteristics which fell within the competence of the Commission on the Status of Women, and if that Commission was deprived of the possibility of considering those communications, it would lose some of its information facilities and would be denied the right to express opinions about certain special situations relating to women.¹⁵⁷

40. Those representatives who contested draft resolution (X) expressed opinions according to which communications concerning the status of women should be dealt with through

existing channels, which were universally applicable, and that the Commission on Human Rights was already responsible for dealing with communications concerning every aspect of political, civil, economic, social and cultural rights, obviously without discriminating between men and women. It was also stated that the establishment of a body to deal with the question of women's rights would create a duplication of work, in the light of the effective work being done by the Commission on Human Rights in connection with violations of human rights in general.¹⁵⁸

41. In 1983, the Council recognized the desirability of strengthening the capacity of the Commission of Women to deal with communications, and reaffirmed the mandate of the Commission to consider confidential and non-confidential communications on the status of women.¹⁵⁹ The Council requested the Secretary-General to submit to the Commission on the Status of Women a report on confidential and non-confidential communications on the status of women, which should include: (a) communications received under Council resolution 76 (V) of 5 August 1947 and 304 I (XI) of 14 and 17 July 1950, including the comments of Governments thereon, if any; and (b) communications received by the specialized agencies, regional commissions and other United Nations bodies, together with information on actions that might have been taken following the receipt of such communications.¹⁶⁰

42. The Council authorized the Commission on the Status of Women to appoint a working group consisting of not more than five of its members, selected with due regard for geographical distribution, to meet in closed meetings during each session of the Commission in order that it might perform the following functions: (a) consideration of all communications, including the replies of Governments thereon, if any, with a view to bringing to the attention of the Commission those communications, including the replies of Governments, which appeared to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women; and (b) preparation of a report, based on its analysis of the confidential and non-confidential communications, which would indicate the categories in which communications were most frequently submitted to the Commission.¹⁶¹

43. Finally, the Council requested the Commission on the Status of Women to examine the report of the working group and to avoid duplication of the work undertaken by other organs of the Council, the Commission being, in that respect, empowered only to make recommendations to the Council, which should then decide what action might appropriately be taken on the emerging trends and patterns of communications. The Council also decided that all actions envisaged by the Commission on the Status of Women, according to that procedure, should remain confidential until such time as the Commission might decide to make recommendations to the Economic and Social Council.¹⁶²

¹⁵²Ibid.

¹⁵³E/1980/C.2/L3.

¹⁵⁴Ibid.

¹⁵⁵E/1980/C.2/SR.12, 14, 15 and 17.

¹⁵⁶E/1980/15.

¹⁵⁷E/1980/C.2/SR.15, paras. 37 and 48.

¹⁵⁸E/1980/C.2/SR.12, paras. 7 and 21.

¹⁵⁹E S C resolution 1983/27.

¹⁶⁰Ibid., para. 2.

¹⁶¹Ibid., para. 4.

¹⁶²Ibid., paras. 5 and 6.

44. Questions relating to the use of confidential or public procedures under resolution 1503 (XLVIII) arose during the debates at the Second (Social) Committee, notably when the Council adopted decisions and resolutions on disappeared persons¹⁶³ and on the situation of human rights in Equatorial Guinea¹⁶⁴ or in Malawi.¹⁶⁵

2. USE OF THE CONFIDENTIAL PROCEDURE UNDER COUNCIL RESOLUTION 1503 (XLVIII) FOR CONSIDERING COMMUNICATIONS ON DISAPPEARED PERSONS

45. The General Assembly, in its resolution 33/173 on the subject of disappeared persons, requested the Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations. The Commission on Human Rights was unable to adopt a decision in that regard.

46. Subsequently at its session of 1979, a draft decision was submitted to the Council¹⁶⁶ on the matter, in which, contrary to the provisions of Assembly resolution 33/173, the Council requested the Subcommittee on Prevention of Discrimination and Protection of Minorities to consider the subject at its thirty-second session, with a view to making recommendations to the Commission on Human Rights at its thirty-sixth session.

47. The sponsors of the draft decision explained that their aim in referring the subject to the Subcommittee on Prevention of Discrimination and Protection of Minorities for its consideration was to sustain the momentum generated by General Assembly resolution 33/173 by having the Subcommittee carry out the preparatory work.¹⁶⁷

48. One delegation who opposed the draft decision proposed the deletion of the paragraph containing the request to the Subcommittee its replacement by two paragraphs:

"1. *Reiterates its request* to the Commission on Human Rights to give priority consideration to the question of disappeared persons with a view to making appropriate recommendations;

"2. *Requests* the Subcommittee on Prevention of Discrimination and Protection of Minorities to consider communications referring to disappeared persons in conformity with resolution 1503 (XLVIII) of the Council".¹⁶⁸

The sponsor of the amendment explained that resolution 33/173 was addressed to the Commission on Human Rights, which was composed of governmental delegations, and not to the Subcommittee, which was composed of a group of experts. Consideration of the matter by the Subcommittee as proposed in the draft decision would therefore be untimely; it could not precede the expression of opinion by the States, which were members of the Commission on

Human Rights.¹⁶⁹ Concerning the operative paragraph 2, on communication referring to disappeared persons, the sponsor delegation insisted that the confidential procedure laid down in resolution 1503 (XLVIII) was the only valid means of ensuring the cooperation of States concerned and also ensuring that the subject did not serve as a pretext for a confrontation between States.¹⁷⁰

49. After consultations, the draft was orally amended to read as follows:

The Economic and Social Council,

"...

"1. *Requests* the Commission on Human Rights at its thirty-sixth session to consider with priority the question of disappeared persons with a view to appropriate recommendations;

"2. *Requests* the Subcommittee on Prevention of Discrimination and Protection of Minorities to consider the subject at its thirty-second session, with a view to making general recommendations to the Commission on Human Rights at its thirty-sixth session;

"3. *Also requests* the Subcommittee to consider communications on disappeared persons *in accordance with the relevant resolutions.*"¹⁷¹

Before the adoption of the draft without a vote, the sponsor of the amendment insisted¹⁷² that the expression "relevant resolutions" referred to Council resolution 1503 (XLVIII), and that the consensus was based on that resolution.¹⁷³

3. USE OF THE PUBLIC PROCEDURE UNDER RESOLUTION 1503 (XLVIII): SITUATION OF HUMAN RIGHTS IN EQUATORIAL GUINEA AND IN MALAWI

50. On the occasion of its examination of the situation of human rights in Equatorial Guinea,¹⁷⁴ the Council decided that the material relating to the question, which was before the Commission under Council resolution 1503 (XLVIII), should no longer be restricted.

51. The Council also used the public procedure under Council resolution 1503 (XLVIII) when it considered the situation of human rights of Jehovah's Witnesses in Malawi. It expressed its regret concerning the failure of the Government of Malawi to cooperate with the Commission on Human Rights with regard to a situation which was said to have deprived thousands of Jehovah's Witnesses of their basic human rights and fundamental freedoms between 1972 and 1975, and decided to publicize the matter.¹⁷⁵

52. With regard to the situation of human rights in Equatorial Guinea, several representatives dissociated themselves from the decision of the Commission on Human Rights in its resolution 15 (XXXV), in which it

¹⁶³E S C decision 1980/128.

¹⁶⁴E S C decision 1979/35.

¹⁶⁵E S C resolution 1980/31.

¹⁶⁶E/1979/C.2/L.7.

¹⁶⁷E/1979/C.2/L.7/Rev.1 and E/1979/C.2/SR.24, para. 71.

¹⁶⁸E/1979/C.2/SR.24, para. 73.

¹⁶⁹E/1979/C.2/SR.24, paras. 75 and 76.

¹⁷⁰*ibid.*, para. 76.

¹⁷¹E/1979/C.2/SR.25, paras. 22-24; emphasis added.

¹⁷²E/1979/C.2/SR.25, paras. 25 and 28.

¹⁷³E S C resolution 1979/38.

¹⁷⁴E S C decision 1979/35.

¹⁷⁵E S C resolution 1980/31.

recommended that the Economic and Social Council open a public debate on an issue that had so far been dealt with under the confidentiality procedure. The opinion was expressed that it was natural that the international community, working through its competent organs, should ensure that States respected the standards it had laid down in matters of human rights. However, that did not mean that it should assume a judicial function and declare certain States guilty. Essentially, the aim was to gain their cooperation, in order to ascertain whether the allegations in communications were accurate, and if they were, to try to bring about the adoption of the appropriate measures. The United Nations, it was said, had neither *de facto* nor *de jure* power to adopt coercive measures.¹⁷⁶ It was also stated that the decision to open a public debate contravened Council resolution 1503 (XLVIII), which had established a specific confidential procedure for considering communications on human rights, and that that procedure could not be violated.¹⁷⁷

53. Other representatives held the opposite view, according to which public statements regarding Member States could not be made unless the documents on which such statements were based were also made public.¹⁷⁸

54. The underlying question in this debate centred on which organ was entitled to open a public debate. The opinion was expressed that, without wishing to belittle the roles of the General Assembly, the Subcommission on Prevention of Discrimination and Protection of Minorities and of the Economic and Social Council itself with regard to the protection of human rights, the decision to conduct a public debate should, as far as possible, be taken by the Commission on Human Rights, whose findings were subsequently brought before the Council and the General Assembly. The Subcommission should limit its role to the submission of confidential suggestions to the Commission, and the latter should then reach its decision in accordance with the procedure laid down in Council resolution 1503 (XLVIII).¹⁷⁹

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

55. During the period under review, the Council continued to endorse the resolutions by the Commission on Human Rights¹⁸⁰ by which the Commission renewed the mandate of the Ad Hoc Working Group of Experts of the Commission.¹⁸¹ In several resolutions concerning allegations regarding infringements of trade union rights in the Republic of South Africa,¹⁸² the Council requested the Ad Hoc Working Group of Experts to continue to study the question and to report thereon to the Commission on Human Rights

¹⁷⁶E/1979/C.2/SR.20, paras. 25 and 26.

¹⁷⁷E/1979/C.2/SR.24, para. 49.

¹⁷⁸E/1979/C.2/SR.23, para. 11.

¹⁷⁹E/1981/C.2/SR.12, para. 72, and SR.15, para. 51.

¹⁸⁰E S C decisions 1979/34, 1981/137 and 1983/135.

¹⁸¹Established by the Commission on Human Rights in its resolution 2 (XXIII).

¹⁸²E S C resolutions 1979/39, 1980/33 and 1981/41.

and the Economic and Social Council at such times as it might consider appropriate. The Council also requested the Commission, in discharging its mandate, to consult with the International Labour Organization and the Special Committee against Apartheid, as well as with international and African trade union confederations.¹⁸³

56. The Council also implemented the procedure laid down in its resolution 277 (X) of 17 February 1950, concerning trade union rights in South Africa and in the United States/Puerto Rico.

1. TRADE UNION RIGHTS IN SOUTH AFRICA

57. Regarding the implementation of the procedure laid down in Council resolution 277 (X), the Council, in its decision 1981/155, noted the allegations regarding infringements of trade union rights submitted by the International Confederation of Free Trade Unions.¹⁸⁴ Having considered that the Government of South Africa had not replied to the request of the Secretary-General for its consent to refer the allegations of violations to the Fact-Finding and Conciliation Commission on Freedom of Association of the International Labour Organization, in accordance with resolution 277 (X), the Council decided to transmit those allegations to the Ad Hoc Working Group of Experts of the Commission on Human Rights for its consideration.¹⁸⁵

58. In 1983, the Government of South Africa gave its consent as required under paragraph 1 (c) (I) of Council resolution 277 (X). The Council then decided to transmit to the ILO Fact-Finding and Conciliation Commission on Freedom of Association, through the ILO Governing Body, the allegations of infringements of trade union rights in South Africa submitted by the International Confederation of Free Trade Unions on 12 February 1982 and the World Federation of Trade Unions on 13 July 1982, together with the text of the consent of the Government concerned. The Council also decided that, in accordance with the procedure outlined in its resolution 277 (X), the Commission's findings should be transmitted to the Council as soon as possible, in keeping with the Commission's established practice.¹⁸⁶ In 1984, the Council, after having considered the note by the Secretary-General on the matter, decided that it should not be pursued.¹⁸⁷

2. TRADE UNION RIGHTS IN THE UNITED STATES/PUERTO RICO

59. The consideration by the Council of the question of complaints of alleged infringements of trade union rights in the United States/Puerto Rico was concluded by the Council in its decision 1982/144, in which it took note of the report of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the ILO Governing Body, which had concluded that the

¹⁸³E S C resolutions 1980/33 and 1982/40.

¹⁸⁴E/1981/28.

¹⁸⁵E S C decision 1981/151.

¹⁸⁶E S C decision 1983/156.

¹⁸⁷E S C decision 1984/150.

allegations of infringements of trade union rights made by the complainant¹⁸⁸ were without foundation.¹⁸⁹

G. Human rights and domestic jurisdiction

60. The question of human rights and domestic jurisdiction are discussed above in connection with the power of the Council to conduct inquiries or investigations and also in connection with the procedure for dealing with communications concerning human rights.¹⁹⁰

1. HUMAN RIGHTS IN POLAND

61. In its decision 1983/145 on the situation of human rights in Poland, the Council endorsed the Commission on Human Rights decision 1983/30, requesting the Secretary-General or a person designated by him to update and complete the thorough study of the human rights in Poland requested by the Commission in its resolution 1982/26, based on such information as he might deem relevant, including comments and materials the Government of Poland might wish to provide. Council decision 1983/145 was adopted by a contrasted vote, 22 votes in favour, 12 against and 18 abstentions.¹⁹¹

62. During the debates in the Council, the representative of Poland criticized the adoption of decision 1983/145. He stated that the resolution of the Commission on Human Rights on which the draft decision was based completely distorted the actual situation in Poland and revealed the purely political motivation of its sponsors. Accordingly, it had no legal basis, exceeded the mandate of the Commission and violated the principle of non interference in the internal affairs of States set forth in Article 2, paragraph 7, of the Charter of the United Nations. He also stated that his Government rejected the resolution of the Commission, as well as the decision of the Economic and Social Council

based upon it, as illegal, null and void, politically harmful and morally hypocritical.¹⁹²

63. On the other hand, one delegation stated that the recent events in Warsaw, Gdansk and other Polish cities had given new and urgent meaning to the draft decision. It was deemed regrettable that the Polish authorities had refused to cooperate with the study requested by the Commission on Human Rights and authorized by the Council. The lack of such cooperation, however, it was felt, should not prevent the Secretary-General and his representative from preparing a clear and comprehensive report on the human rights situation in Poland for presentation to the Commission on Human Rights at its fortieth session.¹⁹³

2. PROCEDURE FOR DEALING WITH COMMUNICATIONS CONCERNING HUMAN RIGHTS

64. The procedure established under resolution 1503 (XLVIII) and envisaged in the draft resolution (X) of the Commission on the Status of Women was contested.¹⁹⁴ It was stated that such procedures represented a control mechanism similar to that elaborated in a number of international treaties. However, it could violate the principle of sovereignty since, in contrast to treaties, it could be applied without the prior consent of the States concerned. In addition, the individuals whose communications served as a basis for the application of the procedure were in fact defying their own countries, which would eventually be held responsible. The individuals were thus accorded international legal status, which had not yet been accepted under international law.¹⁹⁵

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

¹⁸⁸See E S C decision 1978/41 and *Repertory of Practice, Supplement No. 5*, vol. III, under Article 62 (2), para. 38.

¹⁸⁹E S C decision 1982/144.

¹⁹⁰See paras. 21-27 and 35-54.

¹⁹¹E/1983/SR.15.

¹⁹²E/1983/SR.15, para. 44.

¹⁹³*Ibid.*, para. 48.

¹⁹⁴E/1980/C.2/SR.15. See also paras. 36-40 above.

¹⁹⁵E/1980/C.2/SR.15, paras. 44 and 45.