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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL
REPORT OF THE SPECIAL COMMITTEE ON THE
CHARTER OF THE UNITED NATIONS AND ON
THE STRENGTHENING OF THE ROLE OF THE
ORGANIZATION

ECONOMIC AND SOCIAL COUNCIL
First regular session of 1986
Agenda item 9
HUMAN RIGHTS

Letter dated 16 May 1986 from the Secretary-General to the
Permanent Representative of Israel to the United Nations

I have received your letter of 12 May 1986 (A/41/337-E/1986/87), in response to my letter of 9 May, concerning your request that I take "the immediate steps necessary to ensure free access of the general public to all the material stored in the archives of the United Nations War Crimes Commission" (UNWCC). In my letter I had indicated that your request called for a fundamental revision in the rules regarding access to the archives in question, of which the United Nations Secretariat was in the position of a custodian and trustee, and that, consequently, I was initiating consultations with former members of UNWCC on this subject.

As you are aware, at the time when the question of the ultimate disposal and custody of the archives of UNWCC was being considered, the Secretary-General of the United Nations, Mr. Trygve Lie, in the light of previous exchanges of correspondence and consultations between officials of the Commission and of the United Nations Secretariat, indicated, in a letter of 15 December 1947 to the Secretary-General of the Commission, that the United Nations was "prepared to assume custody of the archives of the Commission at the time of its closing". He further suggested "that this question might be discussed between competent officials of the two Organizations with a view to determining conditions of transfer, including provisions for ensuring the necessary restriction on any material of a confidential or secret nature". When UNWCC accepted this offer, in a reply dated 28 January 1948, it also expressly agreed to Mr. Lie's suggestions

* A/41/50/Rev.1.

regarding discussions on the conditions of transfer and for ensuring restrictions on any material of a confidential or secret nature. On the basis of the agreement thus reached between the two organizations, the United Nations, in establishing the rules governing access to the UNWCC archives, consulted with the late Dr. J. J. Litawski, Legal Officer of the Commission, and with the former Chairman, the late Lord Wright, who indicated general agreement with those rules.

The rules promulgated against the above background permit full access to the bulk of the records of the Commission to persons engaged in bona fide research in the history of the Commission or in related problems in international law or associated fields. However, certain records are subject to restrictions, namely:

(a) Those parts of the minutes and documents of the Commission and its Committees and of the Research Office "Documents" that refer to specified individuals charged or suspected of war crimes;

(b) The lists of war criminals, suspects and witnesses; related indexes; and the formal charges and related papers.

These restricted records may be inspected and used only for official United Nations purposes.

Official United Nations purposes have been understood to include prosecution of war crimes and access has thus been granted to Governments to this end upon written request and upon the understanding that the records are strictly confidential and will be handled on the same basis of confidentiality as any other material being used in a criminal investigation. This derives from the fact that the material in the restricted records has not been submitted to judicial process or otherwise subjected to legal review and, in the great majority of cases, the individuals involved have not been informed of the charges or other data relating to them and thus have had no opportunity to reply. The rules further note that:

"It is understood that the United Nations has not succeeded to the functions of the United Nations War Crimes Commission, and the Secretariat, therefore, cannot be called upon to reply to inquiries regarding persons charged or suspected of war crimes."

The rules have been in force since the UNWCC archives were transferred to the United Nations Secretariat in 1948, and, so far as limitations on access to certain records are concerned, they have been interpreted in practice in a manner that has so far proved satisfactory to every Government that has sought access in specific cases. The rules have not been changed. The particular case to which you refer, and in respect of which you quote from a memorandum of Mr. Stavropoulos, relates not to the rules themselves but to the accompanying understanding that the Secretariat cannot be called upon to reply to inquiries from private sources regarding persons charged or suspected of war crimes. In this case, the Secretariat responded affirmatively to a request from two brothers who wished to establish that their names were not included in the UNWCC lists of war criminals as they claimed that their personal and business reputations had been badly damaged by

allegations that they were so listed. The response that they were not so listed did not therefore involve disclosure by the Secretariat of any of the restricted material entrusted to it by UNWCC.

With reference to your letter under reply, I am not aware of any issue at the present time regarding the right of the Secretariat to promulgate the rules governing access to the archives of UNWCC. This is not disputed. However, in interpreting the responsibilities of the Secretariat as custodian and trustee of the records of a body that antedated the United Nations and was entirely independent of it, I have concluded that the proper discharge of these responsibilities, when important and fundamental changes are proposed in the rules governing access, requires consultations with the Governments that had entrusted those records to the United Nations for their views before any decision is taken.

As you have requested that your letter of 12 May 1986 be circulated as an official document of the General Assembly, under items 12 and 135 of the preliminary list, and of the Economic and Social Council, under item 9 of the agenda of its first regular session in 1986, I am giving the same circulation to this reply.

Javier Pérez de Cuéllar
