

COMMISSION ON HUMAN RIGHTS
Fifth session

REPORT BY THE SECRETARY-GENERAL ON THE PRESENT
SITUATION WITH REGARD TO COMMUNICATIONS
CONCERNING HUMAN RIGHTS

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I, INTRODUCTION

1. At its first session, the Commission on Human Rights made certain decisions with regard to the handling of communications concerning human rights which are recorded in Chapter Y, paragraphs 21, 22 and 23 of the report of the first session of the Commission*. On the basis of the Commission's recommendations the rules for the handling of communications were laid down in the resolution of the Economic and Social Council 75 (V) and later amended by resolution 116 A(VI) pursuant to recommendations made by the Commission at its second session*-". The text of resolution 75 ("V") as amended will be found in Annex A of this report.

2. The system has now been in operation for over two years. The Secretary-General therefore respectfully submits to the Commission on Human Rights this report on his experience in its application and on its reception by the general public and by expert opinion. He also submits for consideration'-by the Commission certain tentative suggestions concerning changes to be recommended in the system at present in force.

3. The Secretary-General submits this report in spite of the fact that it is the intention of the Commission to complete in the near future the draft Covenant and Measures of Implementation which may include detailed provisions concerning the handling of petitions addressed to the United Nations (See General Assembly resolution 217(111) B and Council resolution 191(VIII)), because a considerable time may elapse before the Covenant and Measures of Implementation come into practical effect and it may appear appropriate to introduce certain reforms in the procedure at the earliest opportunity.

k It may be noted in this connexion that in the report of the working group on implementation set up at the second session of the Commission on Human Rights, which is now before the Commission, the opinion is' expressed that if some new system of handling petitions were established as a result of the adoption of a Covenant and Measures of Implementation "it would be limited in geographical scope to States that had ratified the Convention setting it up and in consequence to associations, individuals or groups belonging to these States. Relating as it does to contractual obligations,

* Document E/259; Official Records of the Economic and Social Council: second year, fourth session, Supplement No. 3.

-"* E/600; Official Records of the Economic and Social Council: third year, sixth session. Supplement No. 3> chapter YI, paragraph 30.

the new system would, by definition, only be binding on the parties to the Convention".*. The group was of the opinion that communications concerning other countries would continue to be dealt with under the terms of the existing resolution 75(V).

II. DIFFERENT CATEGORIES OF COMMUNICATIONS COMING UNDER
THE TERM "COMMUNICATIONS CONCERNING HUMAN RIGHTS"

5. In compiling the confidential lists of communications presented to the Commission at each session under resolution 75(V), the Secretary-General has interpreted "communications concerning human rights" in the widest possible terms and has included all communications having any bearing on human rights.

The communications which are at present handled in application of the procedure established by resolution 75(v") are therefore of a varied nature:

- (a) Some of the Communications deal with general principles, or contain suggestions of a general nature, particularly in connexion with the work of the Commission on Human Rights.
- (b) Others allege violations of human rights and seek redress for them.
- (c) The United Nations also receives, however, many communications, the connexion of which with "human rights" is more remote, e.g., letters written by private persons in difficulties, who believe that the United Nations is a supreme authority which can grant assistance in their personal and family affairs. Such communications, for example, claim the intervention of the United Nations in obtaining compensation from relatives who, they allege, have deprived them of their rights or seek redress against decisions of judicial and other authorities in civil proceedings etc. In such cases, the provisions of resolution 75 (V) which were meant to apply to the categories (a) and (b) are not appropriate.

6. The Commission may therefore wish to express its opinion as to whether the term "communications concerning human rights" should continue to be interpreted as widely as is being done at present. If the Commission decides to recommend a restrictive interpretation of the term "communication concerning human rights" so as not to include letters from persons asking for assistance in their personal and family affairs, then the Commission may wish to recommend special provisions for dealing with such communications which are only remotely connected with human rights. It may

*- Paragraph 36 of Annex C, part I of the report of the second session of the Commission on Human Rights - E/600; Official Records of the Economic and Social Council; third year, sixth session, Supplement No. 1, Annex C, part I, paragraph 36, page k2.

then either wish to instruct the Secretary-General simply to acknowledge the receipt of such letters, or to instruct him to give advice to the writers as to the authority to which they might apply or to give any other advice which he can give under the circumstances, without either involving the Secretariat in responsibilities or unduly increasing the workload of the appropriate Secretariat service.

III. THE STATEMENT APPROVED IN RESOLUTION 75(V) THAT "THE COMMISSION RECOGNIZES THAT IT HAS NO POWER TO TAKE ANY ACTION IN REGARD TO ANY COMPLAINT CONCERNING HUMAN RIGHTS"

7. The Commission may wish to review the statement approved by resolution 75(V) of the Council that the Commission recognizes that it has no power to take any action with regard to any complaints concerning human rights in the light of recent developments within the United Nations particularly the adoption by the General Assembly of the Universal Declaration of Human Rights.

It is submitted that the statement referred to is a restrictive interpretation of the terms of reference of the Commission on Human Rights which are contained in resolution 5/1 adopted at the first session of the Economic and Social Council and amended by resolution 9/2 adopted at the second session. The terms of reference of the Commission are as follows:

1. The Economic and Social Council, being charged under the Charter with the responsibility of promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion and requiring advice and assistance to enable it to discharge this responsibility,

ESTABLISHES A COMMISSION ON HUMAN RIGHTS,

2. The work of the Commission shall be directed towards submitting proposals, recommendations and reports to the Council regarding:

- (a) an international bill of rights;
- (b) international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters;
- (c) the protection of minorities;
- (d) the prevention of discrimination on grounds of race, sex, language or religion;
- (e) any other matter concerning human rights not covered by Items (a), (b), (c) and (d).

3. The Commission shall make studies and recommendations and provide information and other services at the request of the Economic and Social Council.

4. The Commission may propose to the Council any changes in its terms of reference.

In the light of resolution 75(V) it is clear that the Council, while charging the Commission with the task of giving advice and assistance to the Council to enable it to discharge its responsibility of promoting universal respect for and observance of human rights and submitting proposals, recommendations and reports to the Council regarding "any other matter concerning human rights"; did not delegate to the Commission the right to take any action in regard to any complaint concerning human rights.

8. While under the terms of reference as restricted by resolution 75(V), the Commission on Human Rights has no power to take "any action" except, of course, the action contemplated in resolution 75(V) itself, certain developments indicated below, may justify a reconsideration of the situation and a discussion of the question whether the Commission on Human Rights should not request the Economic and Social Council to amend resolution 75(V) ^{so} that the Commission on Human Rights would have the right to take certain appropriately defined action in certain cases which would also be defined as clearly as possible.

9. One of the reasons which are respectfully brought to the attention of the Commission in this regard is the fact that the blank statement in the Council resolution and, according to the Council resolution, also in letters by which the Secretary-General is requested to acknowledge communications, that the Commission on Human Rights has no power to take any action with regard to any complaints concerning human rights, is bound to lower the prestige and authority not only of the Commission on Human Rights but of the United Nations in the opinion of the general public. This statement, though technically correct as far as the present jurisdiction of the Commission on Human Rights is concerned as distinguished from the jurisdiction of the Economic and Social Council, of the Trusteeship Council and of the General Assembly, creates in the recipient of the Secretary-General's reply the impression that the United Nations as an organization informs "him that it has no power to take any action. This irritates the general public and brings disappointment and disillusionment to thousands of persons all over the world who, through the publicity activities of other organs of the United Nations, including the General Assembly itself (resolution 217(III) D concerning the publicity to be given to the Universal Declaration of Human Rights) have been led to believe that one of the purposes of the United Nations is the achievement of co-operation in promoting and encouraging of universal respect for human rights and fundamental freedoms.

10. It is a fact moreover that alleged violations of human rights have often been taken up by the General Assembly, by the Economic and Social

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Council and by the Trusteeship Council. Reference is made to the action taken by the General Assembly in the following cases: Treatment of

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Indians in South Africa-' ; persecution and discrimination-' ; the alleged violation by the Union of Soviet Socialist Republics of fundamental human rights, traditional diplomatic practices and other principles of the Charter^' ; the question of the observance of human rights in Bulgaria and Hungary including questions of religious and civil liberties with special reference to trials of church dignitaries-^{hi}.

Attention is further drawn to action taken by the Economic and Social Council on the allegations of infringements of trade union rights-^{5/}, concerning the proposals for a survey of forced labour and measures for its abolition-' , and the observance of fundamental human rights in Palestine and some other areas-^{7/}, and to the resolutions of the Trusteeship Council^{o/} in the cases of discrimination in the trust territories of Ruandi-Urundi-' and Tanganyika-^{o/}, etc.

It is true that in some of the above-mentioned cases which were before the General Assembly some other element in addition to the alleged violation of Charter provisions was involved, e.g., in the case of the treatment of Indians in the Union 'of South Africa, arguments based on agreements concluded, between the Indian and South African Governments; in the case of trials of religious leaders, the peace treaties with Hungary and Bulgaria; in other cases, action taken by the General Assembly and by the Economic and Social Council and by the Trusteeship Council was based solely on the provisions of the United Nations Charter; and in all these cases either recommendations of a general nature or recommendations addressed to Member Governments have been made by organs of the United Nations.

11. Under rules 10 (3) of the rules of procedure of the Economic and Social Council the provisional agenda of each regular session of the Council includes all items proposed by, inter alia, non-governmental organizations with consultative status in Category A. Under this rule, non-governmental organizations in Category A suggested to recent sessions

1/ Resolution *kk* (i).

2/ Resolution 103 (i).

3/ Resolution adopted by the General Assembly on 25 April 19⁺9.

k/ Resolution proposed by the Ad Hoc Committee (document A/AC.24/51/Corr.1)

5/ Resolution *l\$*k(VIII).

6/ Resolution 195(VIII).

7/ Part B of resolution 214(IH).

8/ Resolution adopted by the Trusteeship Council on *Ik* March 194-9 (T/280).

9/ Resolution adopted by the Trusteeship Council on 23 March 19⁺9 (T/295).

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of the Economic and Social Council the inclusion on the agenda of items which were, in effect, examinations of alleged violations of human rights in territories of certain Member and non-Member States. Examples of such items inscribed in the agenda of the Economic and Social Council on the request of non-governmental organizations were Items 3 (Survey of forced labour and measures for its abolition) and *ik* (Infringement of trade union rights) of the agenda of the eighth session of the Economic and Social Council, which were already referred to above under (10). In the course of the examination of these items, to which the Council devoted a very considerable part of its time, the Council listened both to statements by the Governments referred to and to statements of the non-governmental organizations concerned. As far as States Members of the United Nations not represented on the Council were concerned, Article 69 of the Charter was applied in the case of the alleged violation of trade union rights. (Under Article 69, the Council must invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that member.) While therefore non-governmental organizations of Category A have the right to seize the Economic and Social Council of complaints alleging the violation of human rights, the Commission on Human Rights which is a body consisting of government representatives of Member States has "no power to take any action".

12. The attention of the Commission is drawn to the criticism of resolution 75(V) "which has been advanced by a recognized scholar in the field of international law, Professor H. Lauterpacht (see: Professor E. Lauterpacht "The International Protection of Human Rights", Académie de Droit International, Extrait du Recueil des Cours, 19⁷⁵ Preliminary Report to the International Law Commission submitted by Professor H. Lauterpacht, document E/CNA/89, paragraphs 17 to 30; Report on "Human Rights, the Charter of the United Nations and the International Bill of the Rights of Man" by the same author submitted to the International Law Association, Brussels Conference, 19⁸¹; statements made in the proceedings of the International Law Association Brussels Conference and resolution adopted by the Brussels Conference, 19⁸¹).

13. For all these reasons the Commission on Human Rights may wish to examine the possibility of recommending to the Economic and Social Council that resolution 75(V) be amended and that the Commission be given the right to report to the Economic and Social Council and to make recommendations to it on matters which have been brought to the Commission's notice in the course of its examination of communications concerning human rights.

From this it would follow that the Commission on Human Rights would, under its general terms of reference quoted above, have the right to

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submit "proposals, recommendations and reports to the Council" regarding "any (other) matter concerning human rights" including matters brought to its attention through communications. The Commission on Human Rights may wish to recommend to the Economic and Social Council in this connexion the adoption of more detailed provisions concerning the exercise of this right, and in particular that in cases affecting very great numbers of persons or having international repercussions, the Commission be requested to examine the communication and the reply which might have been given by the Government concerned under paragraph (e) of resolution 75(V) and resolution 192(VIII) and to submit to the Economic and Social Council a report on such communications concerning alleged violations of human rights as in the opinion of the Commission on Human Rights merit the attention of the Council.

IV. PARAGRAPHS (a), (b) AND (c) OF RESOLUTION 75(V) AS AMENDED

- "(a) To compile a confidential list of communications received concerning human rights before each session of the Commission on Human Rights with a brief indication of the substance of each;
- (b) To furnish this confidential list to the Commission, in private meeting, without divulging the identity of the authors of the communications, except in those cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names being divulged;
- (c) To enable the members of the Commission, upon request, to consult the originals of communications dealing with the principles involved in the promotion of universal respect for and observance of human rights."

L4. Resolution 75(V) distinguishes between communications dealing with the principles involved in the promotion of universal respect for and observance of human rights and those containing complaints and requests for action or assistance. In drawing up the confidential list of communications for each session of the Commission, the Secretary-General has found that this distinction is observed without difficulty, as the type of communications received fall clearly into one or another of these two categories. He has noted also that a great number of communications dealing with principles contain comments on the International Bill of Human Rights.

In Sub-Section A, paragraphs 15 to 18, problems concerning communications dealing with principles are discussed, while in Sub-Section B, paragraphs 19-24, certain observations are made on problems regarding communications containing complaints.

A. Communications dealing with principles

15. The Commission on Human Rights may wish to reconsider the question whether it is necessary or useful that communications dealing with principles as distinguished from communications containing complaints, be kept secret and be listed in a confidential list. In the course of the last years, a great number of communications was received from organizations and from individuals making suggestions, offering useful criticism, and, in general, contributing to the work of the Commission on Human Rights and the Division of the Secretariat which services it. These suggestions are often useful in themselves. Sometimes, the standing of the organization from which they emanate or the authority wielded by the individual as a recognized expert in the field might give particular weight to a communication. It may in certain circumstances be of great use for the Commission to know that a certain proposal before it is supported by a well-known organization or a renowned expert. Moreover, the fact that a certain organization or a certain individual has in a communication to the United Nations expressed a certain opinion, might be of interest to the public at large which follows assiduously the work of the United Nations in the field of human rights. Since the adoption of the Universal Declaration several communications have been received, some from international non-governmental organizations with affiliated organizations in many parts of the world, congratulating the Commission on Human Rights and the United Nations on the work which has been achieved. Under the terms of resolutions 7500 and 116 A(VI) these communications should, strictly speaking, be treated as confidential and the names of the authors, (even in the case of non-governmental organizations, unless they have consultative status) should be divulged only in cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names being divulged.

16. For these reasons, the Commission may wish to consider the possibility of having two lists of communications, one confidential as at present but containing only complaints and requests for action (Part II of the present list before the Commission); the other non-confidential containing, communications dealing, with, the principles involved in the promotion of universal respect for and observance of human rights (Part I of the present list before the Commission).

If this suggestion were adopted, it would be possible to circulate the non-confidential list of communications which summarizes communications dealing with general principles as an unrestricted document and maintain

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with regard to this type of communications the provision of paragraph (c) of resolution 75(7) which enables the members of the Commission, upon request, to consult the originals of such communications.

17. An arrangement on these lines would make the rights of the Commission on Human Rights and of its members in this regard similar to those which have recently been stipulated for the Sub-Commission on Freedom of Information and of the Press by the Council in resolution 197(7111), which provides that: "The Sub-Commission may receive communications from any legally constituted national or international press, information, broadcasting or newsreel enterprise or association relating to the items enumerated in paragraph (a) above with a view to assisting it in the formulation of general principles and proposals in the field of freedom of information."

18. The Commission may also wish to consider the possibility of divulging the names of the authors of all communications dealing with principles.

B. Communications containing complaints

19. As far as communications containing complaints are concerned, it is suggested that the confidential character of the list in which a brief indication of each communication is included should be maintained. The Commission on Human Rights may, however, wish to reconsider the existing provisions prohibiting the divulgence of the identity of the authors of such communications. The prohibition to divulge the identity of the authors of communications was inserted in order to protect them from punitive action which, members of the Council feared, could be taken against them by the authorities against whom they complained. The Secretary-General's experience in applying resolution 75(V) has shown however that so radical a protectionary measure is not necessary.

20. Without expressing an opinion on the question whether governments of States Members of the United Nations would indeed prosecute persons for having petitioned the United Nations for redress, the Secretary-General can state that out of the many thousands of communications which could have been made the subject of criminal prosecution or other punitive action, it was only in one or two cases that the complaints were lodged by persons residing within the territory of the country against the authorities of which the complaint was directed. In the overwhelming majority of cases, the persons complaining were residing outside the territory of the authorities against whom violations of human rights were alleged. The number of persons writing from a place where they would risk criminal prosecution or other punitive action is infinitesimal.

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When the rule prohibiting the divulgence of names was adopted it was also considered that the relatives of the person communicating with the United Nations might be victimized by the national authorities against whom the complaint was lodged. Here again, the Secretary-General without expressing an opinion on the question whether this is a real danger which should be guarded against, suggests that in such a situation the protection of the relatives should be borne in mind by the person communicating with the United Nations; it is not a responsibility of the United Nations.

21. The negligible number of possible cases where secrecy may be required does not justify the maintenance of rules under which the whole procedure is veiled by anonymity and the members of the Commission on Human Rights are prevented from arriving at an opinion on the seriousness or otherwise of a certain allegation.

A change in the provision prohibiting the divulgence of the name of authors of communications is in the Secretary-General's opinion, recommendable in the framework of the present system. It would appear to be still more appropriate if the Commission should decide, as has been suggested above, to request the Economic and Social Council to delete from resolution 75(V) the approval of the statement that the Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights. If the Commission should request to be given the right to report to the Economic and Social Council and to make recommendations to it on cases which in the Commission's opinion merit such action, then the Commission would certainly wish to know the name and address and if possible other particulars concerning the organization or the individual who has submitted the communication.

Having regard to the fact that the Economic and Social Council at its sixth session, by resolution 116 A(VI) has already made a certain inroad into the principle of non-disclosure of names, the Commission may therefore wish to recommend that the existing provisions be repealed insofar as they prohibit the divulgence of names.

22. If, however, the Commission should be of the opinion that certain protective measures should be retained in order to protect writers and their relatives, then the Commission may wish to recommend a rule to the effect that the Secretary-General be requested to state in his letter of acknowledgement to writers of communications containing complaints, inter alia, that a brief indication of the substance of their letter will be brought to the attention of the Commission on Human Rights and that their name and address will be disclosed unless the writer within a certain

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period to be stated informs the Secretary-General that he wishes that his name should not be disclosed. It goes without saying that names would not be disclosed in cases where the writer has already requested this in his original communication. This procedure would appear to safeguard the interests of those writers who, rightly or wrongly, may feel that they are in danger of criminal prosecution or punitive action if their authorship is revealed; it would not, however, compel the Secretariat to keep the names secret from the Commission in the overwhelming majority of cases where no justifiable reason for such secrecy exists. It is submitted that this amendment would also contribute to greater seriousness in communications addressed to the United Nations. It would also give to the Commission on Human Rights the possibility of taking such action as it might be empowered to take under the above suggestions.

23. Subject to the exception which might, under the preceding paragraph, be admitted at the request of the author of a communication, there would appear to be no reason for preventing the members of the Commission from consulting the originals of communications containing complaints.

2k. In resolution 112 A(VI), the Economic and Social Council resolved to give the members of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, with respect to communications dealing with discrimination and minorities, the same facilities as are enjoyed by members of the Commission under resolution 75(V) and the present resolution (i.e., resolution 116 A(VI)).

The Commission may wish to consider what new provisions would appear appropriate in case it should request the Council to amend resolution 75(V). In particular, the Commission may wish to make recommendations on the rights of the members of the Sub-Commission with regard to (a) communications concerning general principles, (b) communications containing complaints, and (c) reports and recommendations arising out of communications containing complaints. It is submitted that the rights of the Sub-Commission need not necessarily be identical with the rights of the Commission itself.

Y. PARAGRAPH (d) OF RESOLUTION 75(V)

"(d) To inform the writers of all communications concerning human rights, however addressed, that their communications have been received and duly noted for consideration in accordance with the procedure laid down by the United Nations. Where necessary, the Secretary-General should indicate that the Commission has no power to take any action in regard to any complaint concerning human rights."

25. The Commission may wish to amend this provision in the light of the changed situation and in the light of the changes suggested above. The Commission may, therefore, wish to recommend the repeal of the second sentence of paragraph (d).

VI. PARAGRAPH (e) OF RESOLUTION 75(V) AS AMENDED

"(e) To furnish each Member State not represented on the Commission with a brief indication of the substance of any communication concerning human rights which refers explicitly to that State or to territories under its jurisdiction, without divulging the identity of the author, except as provided for in paragraph (b) above."

26. In complying with this provision, the Secretary-General has sent each Member State not represented on the Commission a brief indication of the substance of any communication concerning human rights referring to that State or to territories under its jurisdiction shortly after the confidential list of communications has been distributed to members of the Commission at each session. The summaries of the communications concerned are identical in the letter sent to the Member States not represented on the Commission and in the confidential list submitted to the Commission.

27. As a result of transmitting this information to Member States not represented on the Commission, replies have been received from several Governments commenting on the facts alleged in the communications. At its third session, the Commission recommended that the Council request the Secretary-General to ask Governments sending such replies whether they wished them to be transmitted to the Commission on Human Rights in summary form or presented in full as restricted or unrestricted documents. The Council at its eighth session deleted the word "unrestricted" (resolution 192(7111)). The operative provision of resolution 192(7111) reads as follows :

"The Economic and Social Council requests the Secretary-General, in the future, to ask Governments sending replies to communications brought to their attention in accordance with para, (e) of resolution 75(7) whether they wish their replies to be presented to the Commission on Human Rights in summary form or in full."

The Commission may therefore wish to incorporate this provision in the text of resolution 75(7) or in any resolution which may take its place.

28. Replies referring to communications listed in the confidential lists of communications submitted to the second and third sessions of the Commission have been received from six Governments and have been distributed

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to members of the Commission since the third session as restricted documents E/CN.YCR.4, E/CN.VCR.5, E/CİT.VCE.6, E/CN.VCR.7, E/CN.VCR.8, E/CN.VCR.9 29. In this connexion, the Commission may wish to consider the possibility of having "before it the comments of' Governments at the same time as it receives in the confidential list a. summary of the communications to which the comments refer. The Commission may therefore wish to authorize the Secretary-General to furnish a summary of the communication to the Member State concerned at the time of the receipt of the communication. It will "be noted that this suggestion is not restricted to communications which refer to States not represented on the Commission on Human Rights.

The reason why the suggestion is extended to include also Governments represented on the Commission on Human Rights are the following:

(a) Complaints have reached the Secretary-General from, delegations represented on the Commission on Human Rights stating that they would wish to have advance notice of a complaint referring to the State they represent "before the "brief indication of the communication containing a complaint is furnished, in the confidential list, to the Commission. Such a provision would therefore make it possible for Governments represented on the Commission on Human Rights to circulate'to members of the Commission, if the3^f so wish, replies to allegations which they find worthy of reply at the same time as the confidential list is circulated.

(b) The extension of this provision also to States represented on the Commission would avoid the undesirable consequence that States not represented on the Commission would receive communications concerning human rights and referring to those States and to territories under their jurisdiction "before members of the Commission.

It may be recalled that the suggestion for the inclusion of paragraph (e) in resolution 7500 originated with the United Kingdom delegation which stated that the object of inserting such a paragraph was to ensure that States Members of the United Nations but not represented on the Commission should have the same information as members of the Commission concerning communications of interest to them (E/^97). The United Kingdom representative in the Social Committee of the Council at its fifth session stated that it would be wrong for a complaint alleging violation of human rights (it may here be mentioned that the question of sending information to Governments invariably arises in connexion with communications containing complaints) in a Member State not represented on the Commission to be discussed without that State being given a chance to express its views ÇE/ACj/SR.lk, page 8).

VII. THE CONCLUDING PARAGRAPH OF RESOLUTION 75(V)

"Suggests to the Commission on Human Rights that it should at each session appoint an ad hoc committee to meet shortly "before its . next session for the purpose of reviewing the confidential list of communications prepared "by the Secretary-General under paragraph (a) above and of recommending which of these communications, in original, should, in accordance with paragraph (c) above, "be made available to members of the Commission on request".

30. It may be recalled that the Commission at its third session decided that the Ad Hoc Committee on communications should not be retained for the current session (E/CN.4/SR.81, page 25).

If no change should be recommended in the provision of resolution 75(V) to the effect that the Commission has no power to take any action, the Commission might wish to recommend the deletion of this paragraph from resolution 75(V).

In case, however, the Commission should decide to make recommendations to the Council on the lines suggested in this memorandum, then it may wish to recommend that the Ad Hoc Committee be retained but that its terms of reference be revised so that it may assist the Commission in its task of handling communications under the revised provisions.

VIII. SEVERAL MINOR PROBLEMS ARISING FROM THE APPLICATION
OF RESOLUTION 75(V)

31. In this section, the Secretary-General has the honour to draw the attention of the Commission to several minor problems which have arisen from the application of resolution 75(V). Some of these problems would no longer be of practical relevance if the amendments in the scheme of handling communications suggested in this memorandum were adopted. Others, however, would still call for reformatory action.

32. The attention of members of the Commission is drawn to E/857/Rev.1, which gives a factual account of the practices of other organs of the United Nations in regard to communications. This was requested by the Economic and Social Council at its sixth session (E/SR.157, page 11) but has not been discussed by the Council.

The Secretary-General indicates in this document a conflict between the procedure laid down in resolution 75(V) of the Economic and Social Council as amended by resolution 116 A(VI), and the provisional rules of procedure of the Security Council.

The Annex to the provisional rules of procedure of the Security Council reads as follows:

/Provisional

Provisional procedure for dealing with communications from private individuals and non-governmental bodies

- A. A list of all communications from private individuals and non-governmental bodies relating to matters of which the Security Council is seized shall be circulated to all representatives on the Security Council.
- B. A copy of any communication on the list shall be given by the Secretariat to any representative on the Security Council at his request.

The Secretary-General commented on the conflict of the two sets of rules in paragraph 6 of his memorandum (E/057/Bev.1) as follows:

"By the Economic and Social Council resolutions, the Secretary-General is requested to compile a confidential list of communications received, and to furnish this list to the Commission on Human Rights (or to the Commission on the Status of Women) without divulging the identity of the authors of the communications except where authorized to do so in accordance with resolution 116 A(VI) (This resolution does not apply to the Commission on the Status of Women). He is further requested' to enable the members of the Commissions to consult the originals of the communications only in cases where they deal with the principles involved in the promotion of universal respect for and observance of human rights, or with the principles relating to the promotion of the rights of women in the political, economic, civil, social and educational fields. In accordance with the rules of procedure of the Security Council, on the other hand, the Secretariat must compile a list of all communications from private individuals and non-governmental bodies relating to matters of which the Security Council is seized and circulate this list to all the representatives on the Security Council and furnish a copy of any communications on the list to any representative of the Security Council at his request.

The Secretary-General is thus instructed by the Economic and Social Council to make available to members of the Commissions only communications dealing with general principles. He is instructed by the Security Council to give a copy of any communication listed to any representative of that Council."

33. The Secretary-General draws the attention of the Commission to a conflict in the provisions of the existing resolution regarding the divulging of the author's name. Under paragraph (b), the Secretary-General may divulge the identity of the authors of communications in certain cases only. Under

/paragraph

paragraph (c), members of the Commission may, upon request, consult the originals of the communications. In case of such consultations, the names of the authors are divulged.

3^ . The attention of the Commission is also drawn to the fact that resolution 116 A(VI) which allows the name of the author of a communication **to be divulged under certain circumstances** applies only to the list of communications to be furnished to the Commission on Human Rights under resolution 75(V) but does not apply to the similar arrangements made for communications concerning the status of women in resolution 76 (V)•

Most communications concerning the status of women are also communications concerning human rights and such communications are included in the confidential lists submitted to each Commission. It may happen therefore that the same communications will be listed in the confidential list submitted to the Commission on Human Rights with the name of the author, while in the list submitted to the Commission on the Status of Women the name of the author of the same communication will not be divulged. The Commission may wish to draw the attention of the Commission on the Status of Women and of the Council to this difficulty.

35. The co-existence of resolution 75("V") regarding communications concerning human rights and resolution 76(V) regarding communications concerning the status of women gives rise to a further difficulty. Resolution 76(V), like resolution 75(V) contains a paragraph (e) providing for information to be furnished to Governments not represented on the Commission. As indicated elsewhere, communications on the status of women appear both in the confidential list submitted to the Commission on Human Rights and also in the list submitted to the Commission on the Status of Women. The sessions of each Commission may be held at an interval of six months or more. Under each resolution, the Secretary-General must inform Member States not represented on the Commission of communicationj appearing in the two lists. The question arises as to when this information should be furnished to the Governments in case the same communication appears in each list. Moreover, different countries are represented on each Commission and it may happen that a Government will receive notification of a communication included on the Status of Women list, which is at the same time contained in the list submitted to its representative on the Commission on Human Rights. This difficulty would also be overcome if the notification were sent to Governments at the time of the receipt of the communication.

36. Some time ago, the Secretary-General received a communication alleging violations of human rights by organs of a specialized agency; the question

/arose

arose whether the secret provisions of resolution 75.00 also apply to such cases. In this case the Secretary-General acknowledged receipt of the communication, as provided in resolution 75(V), and also inserted a brief indication of the complaint in the confidential list of communications. He did not, however, transmit the communication to the specialized agency concerned. The Commission on Human Rights may wish to express its opinion as to how communications of this kind should be handled, particularly whether the Secretary-General should have transmitted the original (or a copy) of the whole communication to the specialized agency, or whether, by analogy of paragraph (e) of resolution 7500^a a brief indication of the substance of the communication should have been furnished to the specialized agency.

VIII. A list of topics concerning which suggestions are tentatively submitted in this memorandum will be found in Annex B.

ANNEX A

Resolution 75 (v) as amended by resolution 116 A, (VI)

THE ECONOMIC AND SOCIAL COUNCIL

HAVING CONSIDERED chapter v of the report of the first session of the Commission on Human Rights concerning communications (document E/259),

Approves the statement that "the Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights";

Requests the Secretary-General:

(a) To compile a confidential list of communications received concerning human rights "before each session of the Commission on Human Rights with a "brief indication, of the substance of each;

(1) To furnish this confidential list to the Commission, in private meeting, without divulging the identity of the authors of the communications, except in those cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names "being divulged;

(c) To enable the members of the Commission, upon request, to consult the originals of communications dealing with the principles involved in the promotion of Universal respect for and observance of human rights;

(d) To inform the writers of all communications concerning human rights, however addressed, that their communications have "been received and duly -noted for consideration in accordance with the procedure laid down "by the United Nations. "Where necessary, the Secretary-General should indicate that the Commission has no power to take any action in regard to any complaint concerning human rights;

(e) To furnish each Member State not represented on the Commission with a brief indication of the substance of any communication concerning human rights which refers explicitly to that State or to territories under its jurisdiction without divulging the identity of the author, except as provided for in paragraph (b) above.

Text of Resolution 116 A (VI)

A,

COMMUNICATIONS

The Economic and Social Council

Having reconsidered the procedure for communications relating to human rights laid down in Resolution 75 (v), as regards points (b) and (e),

Decides to amend the procedure provided for in point (b) of the above

/resolution

resolution "by adding to the text of point (b) the following words:
"except in those cases where the authors state that they have already
divulged or intend to divulge their names or that they have no
objection to their names "being divulged"; and in point (e) "by adding the
following words: "except as provided for in paragraph (b) above"; and

Resolves to give the members of the Sub-Commission on the
Prevention of Discrimination and the Protection of Minorities, with respect
to communications dealing with discrimination and minorities the same
facilities as are enjoyed "by members of the Commission under
Resolution 75 (V) and the present Resolution.

ANNEX B

LIST OF TOPICS FOR CONSIDERATION BY THE COMMISSION

The question of communications which are only remotely connected with human rights (communications from persons asking assistance in personal affairs, etc.) (paragraph 6).

The statement that the Commission has no right to take any action in regard to any complaints regarding human rights (paragraph 7).

Reports and recommendations "by the Commission (paragraph 13).

The possibility of two lists of communications: one, confidential, containing complaints; the other, non-confidential, containing communications dealing with principles (paragraph 16).

The divulgence of the names of the authors of communications dealing with principles (paragraph 18).

Retention of the confidential character of the list of communications containing complaints (paragraph 19).

The rule prohibiting the divulgence of the names of authors of communications containing complaints (paragraphs 21 and 22),

Consultation of the originals of communications containing complaints "by members of the Commission (paragraph 23).

The status of the Sub-Commission on Prevention of Discrimination with regard to communications (paragraph 24).

Text of letters of acknowledgement of communications (paragraph 25).

Incorporation of resolution 192 (VIII) (paragraph 27).

The time when Governments shall be furnished with summaries of communications which refer to their territories (paragraph 29).

The Ad Hoc Committee (paragraph 30).

Conflict between resolution 75 (v) and the Rules of Procedure of the Security Council (paragraph 32).

Conflict between paragraphs (b) and (c) of resolution 75 (v) (paragraph 33).

Conflict between resolution 75 (V) as amended by resolution 116 A (VI) and resolution 75 (V) (paragraph 34).

Furnishing of information to governments not represented on the Commission on Human Rights and on the Commission on the Status of Women, respectively (paragraph 35).

Complaints against Specialized Agencies (paragraph 36).