



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/8035
28 August 1970

ORIGINAL: ENGLISH

Twenty-fifth session
Item 46 of the provisional agenda

CREATION OF THE POST OF UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

Report of the Secretary-General

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I. INTRODUCTION

1. At its 1835th plenary meeting, on 16 December 1969, the General Assembly adopted resolution 2595 (XXIV), entitled "Creation of the post of United Nations High Commissioner for Human Rights", which reads as follows:

"The General Assembly,

"Recalling its resolutions 2062 (XX) of 16 December 1965, 2333 (XXII) of 18 December 1967 and 2437 (XXIII) of 19 December 1968 relating to the creation of the post of United Nations High Commissioner for Human Rights,

"Noting Economic and Social Council resolution 1237 (XLII) of 6 June 1967 on the establishment of a United Nations High Commissioner's Office for Human Rights and the amendments submitted thereto by the United Republic of Tanzania, 1/ and Council resolution 1238 (XLII) of 6 June 1967 on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery,

"Noting also the views expressed in the current general debate on that question,

"Considering that there has not been sufficient time at its twenty-fourth session to complete the consideration of this matter,

"1. Decides to give the highest priority to the consideration of this item with a view to the possibility of concluding such consideration at its twenty-fifth session;

"2. Requests the Secretary-General to provide the General Assembly at its twenty-fifth session with an analytical study relating to Economic and Social Council resolution 1237 (XLII) and the amendments thereto, and Council resolution 1238 (XLII) on this subject."

2. In accordance with operative paragraph 2 of that resolution, the Secretary-General submits the present study.

3. In preparing this analytical study the Secretary-General has been aware of the controversial issues raised by Member States concerning the establishment of the

1/ Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 61, document A/6699, annex III.

proposed new institution. As indicated by the Secretary-General's representative before the Third Committee of the General Assembly at its twenty-fourth session, the Secretary-General could produce a factual study, but could not undertake to evaluate the merits of the proposal nor express assessments of the effectiveness of existing organs active in the field of human rights (A/C.3/SR.1731).

Accordingly, this study is confined to providing information and an analysis of the views submitted by Governments and specialized agencies concerning each paragraph of Economic and Social Council resolution 1237 (XLII), and the amendments thereto; it is emphasized that the study does not reproduce the full statements made before the various United Nations organs. It is preceded by background information relating to the consideration of the matter by the various organs of the United Nations. The statements and comments used in the study are contained in the following documents:

Commission on Human Rights, twenty-third session (1967): E/CN.4/SR.938, 939 and 940

Social Committee of the Economic and Social Council (forty-second session, 1967): E/AC.7/SR.572-577

Plenary meetings of the Economic and Social Council (forty-second session, 1967): E/SR.1479

Third Committee of the General Assembly, twenty-fourth session (1969): A/C.3/SR.1726, 1727, 1730, 1731 2/

Comments submitted by the Governments of fourteen Member States and by the ILO and UNESCO pursuant to Economic and Social Council resolution 1238 (XLII) and General Assembly resolution 2437 (XXIII): A/7498, annexes III and IV.

4. Costa Rica^{3/} submitted a proposal to establish the post of the United Nations High Commissioner for Human Rights at the twentieth session of the General Assembly. Owing to other priorities, the Assembly could not consider the Costa Rican proposal and in resolution 2062 (XX) of 16 December 1965, the Assembly requested the Economic and Social Council to transmit the proposal to the Commission on Human Rights for study and report. At its twenty-second session, in 1966, the

2/ At the time of writing (June 1970) only the provisional summary records of these meetings of the Third Committee were available.

3/ Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 98, document A/5963.

Commission on Human Rights considered this item, in accordance with a decision taken at its twenty-first session,^{4/} under the title "Question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery". In resolution 4 (XXII), the Commission established a Working Group of nine of its members to study all relevant questions concerning the institution of a United Nations High Commissioner for Human Rights. The Commission requested the Secretary-General to prepare an analytical and technical study for the purpose of assisting the Working Group to carry out its mandate and requested the Economic and Social Council to draw the attention of the General Assembly to resolution 4 (XXII). As requested by the Commission on Human Rights, the Economic and Social Council, in resolution 1163 (XLI) of 5 August 1966, informed the General Assembly of the debate which had taken place in the Commission on Human Rights and of the establishment and mandate of the Working Group. The Council also decided to transmit to the Assembly the records of the discussion in the Commission and the Council during their consideration of the question.^{5/} At its 1498th meeting on 19 December 1966, the General Assembly approved the recommendation of the Third Committee that the consideration of the question of the creation of the post of United Nations High Commissioner for Human Rights should be postponed to the twenty-second session.

5. At its twenty-third session, in 1967, the Commission considered the report of its Working Group (E/CN.4/934) and the analytical and technical study (E/CN.4/AC.21/L.1 and Add.1 and Corr.1) prepared by the Secretary-General, and on the basis of recommendations made by the Working Group adopted resolution 14 (XXIII),^{6/} in which it requested the Economic and Social Council to recommend to the General Assembly the adoption of a draft resolution deciding to establish a United Nations High Commissioner's Office for Human Rights.

4/ Official Records of the Economic and Social Council, Forty-first Session, Supplement No. 8 (E/4184), chapter V.

5/ Ibid., chapter V; E/CN.4/SR.876 and 879-883; and ibid., Forty-first Session, 1445th meeting.

6/ Ibid., Forty-second Session, Supplement No. 8 (E/4322), chapter VIII; and chapter XVII, draft resolution IV.

6. At its forty-second session, the Economic and Social Council, by resolution 1237 (XLII), recommended to the General Assembly the adoption of a draft resolution identical to that contained in resolution 14 (XXIII) of the Commission on Human Rights. The draft resolution recommended by the Council reads as follows:

"The General Assembly,

"Having considered the recommendation contained in Economic and Social Council resolution 1237 (XLII) of 6 June 1967,

"1. Decides to establish a United Nations High Commissioner's Office for Human Rights, the Office to be so organized within the framework of the United Nations that the High Commissioner will possess the degree of independence and prestige required for the performance of his functions under the authority of the General Assembly;

"2. Instructs the United Nations High Commissioner for Human Rights to assist in promoting and encouraging universal and effective respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, as set forth in the Charter of the United Nations and in declarations and instruments of the United Nations or of the specialized agencies, or of intergovernmental conferences convened under their auspices for this purpose without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international conventions on the protection of human rights and fundamental freedoms; in particular:

"(a) He shall maintain close relations with the General Assembly, the Economic and Social Council, the Secretary-General, the Commission on Human Rights, the Commission on the Status of Women and other organs of the United Nations and the specialized agencies concerned with human rights, and may, upon their request, give advice and assistance;

"(b) He may render assistance and services to any State Member of the United Nations or member of any of its specialized agencies or of the International Atomic Energy Agency, or to any State Party to the Statute of the International Court of Justice, at the request of that State; he may submit a report on such assistance and services with the consent of the State concerned;

"(c) He shall have access to communications concerning human rights, addressed to the United Nations, of the kind referred to in Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959 and may, whenever he deems it appropriate, bring them to the attention of the Government of any of the States mentioned in sub-paragraph (b) above to which any such communications explicitly refer;

"(d) He shall report to the General Assembly through the Economic and Social Council on developments in the field of human rights, including his observations on the implementation of the relevant declarations and instruments adopted by the United Nations and the specialized agencies, and his evaluation of significant progress and problems; these reports shall be considered as separate items on the agenda of the General Assembly, the Economic and Social Council and the Commission on Human Rights, and before submitting such reports, the High Commissioner shall consult, when appropriate, any Government or specialized agency concerned, taking due account of these consultations in the preparation thereof;

"3. Decides that the High Commissioner shall be appointed by the General Assembly, on the recommendation of the Secretary-General, for a term of five years, and that his emoluments shall not be less favourable than those of an Under-Secretary;

"4. Decides to establish a panel of expert consultants to advise and assist the High Commissioner in carrying out his functions; the panel shall not exceed seven in number, the members to be appointed by the Secretary-General in consultation with the High Commissioner, having regard to the equitable representation of the principal legal systems and of geographical regions; the terms of appointment of the members of the panel shall be determined by the Secretary-General, in consultation with the High Commissioner, and shall be subject to the approval of the General Assembly;

"5. Invites the High Commissioner to conduct his office in close consultation with the Secretary-General and with due regard for the latter's responsibilities under the Charter;

"6. Requests the Secretary-General to supply the High Commissioner with all the facilities and information required for carrying out his functions;

"7. Decides that:

"(a) The Office of the High Commissioner shall be financed under the regular budget of the United Nations;

"(b) Within the limits of the budgetary appropriation provided and on the recommendation of the High Commissioner, the staff of the Office of the High Commissioner shall be appointed by the Secretary-General and such staff shall be subject to the conditions of employment provided under the Staff Regulations of the United Nations adopted by the General Assembly and the Staff Rules promulgated thereunder by the Secretary-General;

"(c) Provision may also be made to permit the employment of personnel without compensation or on a fee basis for special assignments;

"(d) The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the Financial Rules promulgated thereunder by the Secretary-General, and the accounts relating to the Office of the High Commissioner shall be subject to audit by the United Nations Board of Auditors."

7. The Council also transmitted to the General Assembly the following amendments of the United Republic of Tanzania to the text of resolution 1237 (XLII):

(1) In paragraph 2, after "instruments of the United Nations", insert the words "especially the Universal Declaration on Human Rights".

(2) Insert the following new sub-paragraph after paragraph 2 (a):

"He shall initiate action where necessary to promote, encourage and strengthen universal and effective respect for human rights and fundamental freedoms."

(3) Delete the last lines of sub-paragraph 2 (d), beginning with the words "and before submitting such reports".

(4) In paragraph 3, replace the word "appointed" by the word "elected".

(5) In paragraph 4, replace the words "appointed by the Secretary-General in consultation with the High Commissioner," by the words "elected by the General Assembly on the basis of equitable geographical representation".

(6) Add a new paragraph 6:

"Decides to elaborate during its twenty-second session an appropriate convention which shall govern the powers of competence and procedures under which the High Commissioner and his Office shall operate."

(7) Add a new paragraph 7:

"Decides to invite the Director-General of the International Labour Office to submit to the General Assembly, for its guidance and assistance at its forthcoming session, a report on the experience of the International Labour Organisation in the field of implementation of human rights in its sphere of competence."

8. At the same session the Council adopted resolution 1238 (XLIII), the operative paragraphs of which read as follows:

"The Economic and Social Council,

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"1. Requests the Secretary-General to bring Economic and Social Council resolution 1237 (XLII), and the amendments thereto submitted by the United

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Republic of Tanzania,^{7/} together with pertinent documentation representing the various points of view expressed, to the attention of Member States, to invite their views on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery, and to submit a report embodying the replies of Governments in time for consideration by the General Assembly during its twenty-second session;

"2. Further requests the Secretary-General to invite the Director-General of the International Labour Office and the Director-General of the United Nations Educational, Scientific and Cultural Organization to submit to the General Assembly, for its assistance at its twenty-second session, a report on their experience concerning the implementation of human rights in their spheres of competence."

9. At its twenty-second session, the General Assembly had before it, inter alia, the texts transmitted by the Economic and Social Council and the statements of Governments and the specialized agencies submitted in response to Council resolution 1238 (XLII). The Assembly was, however, unable to consider the item owing to the heavy programme of work and by resolution 2333 (XXII) of 18 December 1967 decided to give high priority to the question at its twenty-third session. At its twenty-third session, by resolution 2437 (XXIII) of 19 December 1968, the Assembly expressed its regret at again not being able to give the item the required priority and decided to give high priority to the consideration of the question at the twenty-fourth session.

10. The General Assembly at its twenty-fourth session, had before it:

(a) a note by the Secretary-General (A/7498) containing the text of Council resolution 1237 (XLII), the amendments proposed thereto by the United Republic of Tanzania, the replies received from Members States in response to paragraph 1 of Council resolution 1238 (XLII) and General Assembly resolution 2437 (XXIII) and the reports received from the ILO and UNESCO in accordance with paragraph 2 of resolution 1238 (XLII); and Council resolution 1237 (XLII) and the amendments submitted thereto by the United Republic of Tanzania. The Assembly in resolution 2595 (XXIV), considering that there had not been sufficient

^{7/} Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 61, document A/6699, annex III.

time at its twenty-fourth session to complete consideration of this matter, decided to give highest priority to the consideration of the question at its twenty-fifth session and requested the present study (see para. 1 above).

11. As stated in paragraph 3 above, the study which follows sets out largely the views of the Governments of Member States and certain specialized agencies concerning each paragraph of Council resolution 1237 (XLII) and the amendments thereto submitted by the United Republic of Tanzania. The views are set out in the alphabetical order of the countries concerned.

II. OPERATIVE PARAGRAPH 1 OF THE DRAFT RESOLUTION RECOMMENDED
BY THE ECONOMIC AND SOCIAL COUNCIL IN RESOLUTION 1237 (XLII):
GENERAL CONSIDERATIONS

12. The first paragraph of Economic and Social Council resolution 1237 (XLII) recommends to the General Assembly the adoption of a draft resolution the preambular part and operative paragraph 1 of which reads as follows:

"The General Assembly,

"Having considered the recommendation contained in Economic and Social Council resolution 1237 (XLII) of 6 June 1967,

"1. Decides to establish a United Nations High Commissioner's Office for Human Rights, the Office to be so organized within the framework of the United Nations that the High Commissioner will possess the degree of independence and prestige required for the performance of his functions under the authority of the General Assembly;"

13. The comments made regarding this paragraph appear hereunder under three subheadings: A. Establishment of a United Nations High Commissioner's Office for Human Rights; B. The title of "High Commissioner"; C. Organization of the Office within the United Nations framework.

A. Establishment of a United Nations High Commissioner's
Office for Human Rights

14. The representative of Bulgaria in the Third Committee said there was a danger inherent in the creation of the post of High Commissioner as it would set a precedent; gradually, each of the subsidiary bodies of the Economic and Social Council might be replaced by one man assisted by a small number of expert consultants. There was no justification for considering the creation of such a post until full advantage had been taken of the existing procedures for dealing with human rights problems (A/C.3/SR.1731).

15. The representative of the Byelorussian Soviet Socialist Republic in the Third Committee affirmed that his Government was not convinced of the need to establish another organ; and it considered that the creation of the post might divert attention from such burning issues as the punishment of war crimes, the prevention of discrimination and the treatment of civilians in time of war (A/C.3/SR.1727).

16. The representative of Canada stated in the Third Committee that the question of human rights was increasingly impinging on the conscience of all men. There

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was no better way of translating that awareness into reality than by establishing the post of High Commissioner for Human Rights. Indeed, it would be strange if the whole system of international instruments and treaties for the protection of human rights were not supplemented by executive and conciliatory functions. That was the main reason why Canada unreservedly supported the creation of this post (A/C.3/SR.1727).

17. The representative of Ceylon in the Third Committee emphasized that the creation of an office of United Nations High Commissioner for Human Rights or other appropriate international machinery should not be allowed to distract attention or divert energy from efforts to prevent the grossest violations of human rights or to drain the limited financial resources of the Organization in such a way as to weaken those efforts (A/C.3/SR.1731).

18. The representative of Costa Rica in the Third Committee pointed out that the recognition, promotion and protection of human rights were among the reasons for the existence of the United Nations and constituted the very essence of the work of the Organization and its specialized agencies, and the creation of the post of High Commissioner would provide the means by which the international community could best make those rights effective. It was only through an impartial office endowed with sufficient moral prestige and legal authority to make it invulnerable to the pressure of events and political compromises that the lofty purposes of the United Nations Charter in that sphere could be achieved (A/C.3/SR.1726). The Government of Costa Rica also indicated that it considers the establishment of the High Commissioner's Office of great importance for the proper fulfilment of the promises made in the Charter for the respect and development of human rights (A/7498, annex III).

19. The Government of Finland indicated that it supports the proposal to establish the office of a United Nations High Commissioner for Human Rights in accordance with the provisions of Economic and Social Council resolution 1237 (XLII) (A/7498, annex III).

20. The Government of France noted that it approves in principle the creation of this post in accordance with the terms of resolution 1237 (XLII) of the Economic and Social Council (ibid.).

21. The representative of Ghana in the Third Committee noted the desirability of appointing a High Commissioner but doubted whether the creation of the post would bridge the gap between the word and deed on the part of the United Nations. What could the High Commissioner do in relation to violations of human rights in South Africa, Portugal, Southern Rhodesia and the Middle East? If the Security Council and the General Assembly could not solve the problems of individuals in those areas, he felt diffident about predicting the success that a High Commissioner might have (A/C.3/SR.1731).

22. The representative of Guatemala pointed out at the twenty-third session of the Commission on Human Rights that the creation of the office of a High Commissioner would help to guarantee that human rights and fundamental freedoms were respected and the measures taken under the Universal Declaration of Human Rights and the other instruments adopted on the matter were applied. The High Commissioner would be able to bring great moral force to bear, and his diplomatic experience would be extremely useful in consultations with States (E/CN.4/SR.940).

23. The representative of India at the Commission on Human Rights was of the opinion that the whole question of creating this institution had to be examined in the context of the machinery set up to promote respect for human rights; before proposing the establishment of new organs and taking new measures, it was advisable to consider whether the action already taken by the existing organs was satisfactory. There were already important international legal instruments in existence to give effect to human rights which provided for far-reaching measures, and which accordingly removed any necessity to create this proposed office (E/CN.4/SR.940).

24. The representative of Israel in the Social Committee of the Economic and Social Council supported the establishment of this office. Experience had shown that the resolutions, declarations and conventions drawn up under United Nations auspices had not sufficed to ensure the full implementation of human rights. The establishment of a post of High Commissioner would assuage the bitterness of individuals and groups who felt that they had been forgotten and would provide a stimulus for those who wished to improve and liberalize laws, practices and policies (E/AC.7/SR.572).

25. The representative of Jamaica stated in the Commission on Human Rights that the creation of the institution of a High Commissioner represented the first step

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towards an institutional agreement within the United Nations, to promote respect for human rights and fundamental freedoms. The creation of the institution was intended to fill a vacuum, for the task could not be assigned to the Secretary-General of the United Nations. He was conscious that for a great many years Member States had been concealing the truth about events within countries, and that human rights were being violated in many respects. It was time, in his view, that such an institution was set up in order to promote respect for human rights and fundamental freedoms (E/CN.4/SR.946).

26. The representative of Japan in the Third Committee indicated that two years earlier the Japanese Government had thought the creation of the post to be inappropriate (A/7498, annex III). Since then the Government had given the matter extensive consideration and was now ready to adopt a more positive attitude. In order to breathe life into various international instruments on human rights and to apply them in practice it was essential to take certain practical and effective measures to implement these international standards. In the circumstances, there was obviously an urgent necessity for a post of High Commissioner for Human Rights to help the international community in its efforts to achieve respect for those rights (A/C.3/SR.1726).

27. The representative of Libya on the Economic and Social Council believed that the time was not ripe for establishing a post of High Commissioner; it would be preferable to await the ratification of the International Covenants and the Optional Protocol on Civil and Political Rights and to improve the existing machinery in the field of human rights. The establishment of such a post could only be considered when United Nations activities in the field of human rights and the progress so far achieved in implementing the relevant resolutions had been reviewed (E/AC.7/SR.572).

28. The representative of the Netherlands supported the creation of the post of United Nations High Commissioner for Human Rights. While the United Nations had made considerable progress in setting standards designed to ensure universal respect for human rights in the form of international instruments, the time had now come to ensure their implementation. Her delegation was convinced that such an official, of high moral standing and invested with appropriate authority, could do very useful work to promote human rights (A/C.3/SR.1726).

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29. The representative of New Zealand in the Commission on Human Rights said that there was no divergence of views among States which favoured the creation of the institution of a United Nations High Commissioner for Human Rights. They all considered that that measure would help to throw fresh light on the work accomplished by the United Nations in the field of human rights, and to make it more influential. The establishment of such an organ alongside international instruments would provide opportunities to institute co-operation in an atmosphere of confidence and objectivity and to get away from stereotyped formulae. The High Commissioner would be able to help in dispelling the atmosphere of mistrust and anxiety which prevailed in certain situations, for instance in the case of minority cultural groups in danger of being sacrificed to nationalism. In such cases machinery was needed whose impartiality was above suspicion and which was capable of mobilizing public opinion, so as to make the action of the United Nations more effective by enhancing its prestige (E/CN.4/SR.940).

30. The representative of Pakistan in the Third Committee said that while the responsibility for the immediate protection of human rights lay with States, it must be supplemented at the international level. It was in that light he supported the idea of creating a post of High Commissioner for Human Rights (A/C.3/SR.1730).

31. The representative of Panama indicated in the Social Committee of the Economic and Social Council that his delegation supported the establishment of the office of High Commissioner for Human Rights as a step forward, however small, towards promoting respect for human rights. The High Commissioner would not be able to solve all the problems of human rights, but his nomination might lead to more effective measures for their protection (E/AC.7/SR.573).

32. The representative of the People's Republic of the Congo in the Third Committee said he could not subscribe to so utopian an idea as the creation of a post of High Commissioner for Human Rights when the principal organs of the United Nations had been consistently prevented from carrying out their functions satisfactorily by the Powers enthusiastically urging the creation of the post (A/C.3/SR.1730).

33. The representative of Poland on the Third Committee opposed the establishment of this office and said its creation would be a step back to the time when the United Nations had not appropriate means for the protection of human rights at its

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disposal. In the four years that had elapsed since the idea of a High Commissioner's Office had been formally advanced, the United Nations had developed an international set of norms in the human rights field as a result of which the concept of the Office no longer corresponded either to the present-day international machinery, or to the principles set forth in the international instruments dealing with human rights. His delegation accordingly considered that the item on the Creation of the Post should be deleted from the agenda of the General Assembly (A/C.3/SR.1730).

34. The representative of Saudi Arabia in the Third Committee favoured any step likely to promote human rights, but concluded that the establishment of such an office would be impractical and potentially damaging to human rights. He doubted whether any one man could be fully conversant with many legal systems, many political ideologies and the unspoken ethos of peoples in different continents (A/C.3/SR.1727).

35. The representative of Sierra Leone noted in the Third Committee that it was over four years since the question of the creation of the post of United Nations High Commissioner for Human Rights had first been raised. With the growing interest in human rights throughout the world, the time was ripe for the appointment of such a Commissioner and that it was particularly important to proceed to create the post in question at the earliest possible opportunity (A/C.3/SR.1727).

36. The representative of the Sudan before the Third Committee said a one-man institution, such as a High Commissioner, would make no positive contribution to the promotion of human rights and fundamental freedoms and could not in any way be justified (A/C.3/SR.1730).

37. The Government of Sweden indicated that it had from the outset been strongly in favour of the efforts to establish an office of High Commissioner for Human Rights (A/7498, annex III).

38. The representative of Syria in the Third Committee said that from the legal point of view, Economic and Social Council resolution 1237 (XLII) was incompatible with the Charter and past practice of the United Nations. This resolution was unconstitutional in view of the fact that Article 56 of the Charter called for all Members to take joint and separate action in co-operation with the Organization to achieve the purposes of Article 55 which included the promotion of respect for and

observance of human rights. Member States should not abdicate their responsibility by conferring the task of securing human rights on one man but should take joint action through the representative organs of the United Nations. Consequently, the creation of this post would be incompatible with Article 56 and would virtually constitute a motion of ~~no~~ confidence in the United Nations (A/C.3/SR.1731).

39. The representative of the Ukrainian Soviet Socialist Republic at the Commission on Human Rights stated that his delegation envisaged that the United Nations activities in the field of human rights should be expanded, not by the establishment of some administrative authority or other, by whatever name it may be called, including that of High Commissioner, but rather by the development of international co-operation, by the conclusion of international agreements and by commitments on the part of States themselves. Without international co-operation and in the absence of international agreements, a High Commissioner could not play any useful role (E/CN.4/SR.940).

40. The representative of the Union of Soviet Socialist Republics in the Social Committee of the Economic and Social Council said his delegation could not support the creation of the post of High Commissioner for Human Rights. There were many arguments - all valid - against the creation of this post. The Union of Soviet Socialist Republics could not support the creation of the office as it would be incompatible with the Charter of the United Nations, which called for international co-operation and prescribed collective measures to ensure respect for human rights. It provided for the establishment of representative bodies. In no field did it prescribe that power should be entrusted to an individual. The independence which he would enjoy vis-à-vis the United Nations and its Members would nullify the collective character of the action taken by United Nations bodies in the field of human rights. He repeated that his delegation was strongly and resolutely opposed to the establishment of the Office of High Commissioner for Human Rights. It should not, therefore, be said that it had shown some misgivings or made certain reservations on the subject. It had given the question mature consideration and had always felt that the establishment of the office of High Commissioner would have harmful effects (E/AC.7/SR.572). The representative of the Union of Soviet Socialist Republics in the Third Committee also indicated his strong opposition to the proposal to establish the post of High Commissioner for Human Rights (A/C.3/SR.1726).

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41. The representative of the United Arab Republic in the Third Committee said that the Universal Declaration of Human Rights had been proclaimed as a common standard of achievement for all peoples and all nations. It was therefore a collective responsibility which could not be delegated in any way, let alone to a one-man institution such as the post of High Commissioner for Human Rights (A/C.3/SR.1730).

42. The representative of the United States of America in the Social Committee of the Economic and Social Council said that by establishing the office of the High Commissioner for Human Rights the United Nations could make a major contribution to the promotion of respect for human rights and fundamental freedoms. Such an office could hasten the acceptance of the various international instruments in the field of human rights and could help the United Nations and Member States to understand the problems involved in giving effect to them. Furthermore there was a need for an office which would proclaim the United Nations concern with human rights and express the non-political and fundamental nature of those rights. One man could speak with a moral force which no committee could even express (E/AC.7/SR.573).

43. The representative of Uruguay in the Third Committee was of the view that the creation of the post of High Commissioner should not be deferred because that would mean the postponement of a measure which would promote and encourage universal and effective respect for human rights and fundamental freedoms for all (A/C.3/SR.1726).

44. The representative of Venezuela expressed the view in the Social Committee of the Economic and Social Council, that his delegation was convinced of the value of a system for the protection of human rights, and was anxious to improve existing institutions for the safeguarding of those rights. His delegation believed that the institution of the office of High Commissioner would be useful and necessary and supported the proposal (E/AC.7/SR.524).

B. The title of "High Commissioner"

45. The representative of the Union of Soviet Socialist Republics in the Social Committee of the Economic and Social Council took strong exception to the use of the title "High Commissioner" and indicated that it was an unacceptable title to his delegation. He noted that some countries which had been former colonies had had to get rid of the high commissioners who had been forced on them and believed that there was no desire to reinstate a title of such unhappy memory (E/AC.7/SR.572).

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46. The representative of the United Kingdom disagreed with the Union of Soviet Socialist Republics representative's remarks and pointed out that the term had been used to designate the High Commissioner for Refugees (E/AC.7/SR.579).

C. Organization of the Office within the
United Nations framework

47. The representative of Czechoslovakia in the Third Committee said that the office could develop into an institution which duplicated the work of the existing United Nations organs, including the Secretary-General, or an institution with powers exceeding those of any other organ (A/C.3/SR.1730).

48. The representative of Iran in the Social Committee of the Economic and Social Council noted that the High Commissioner should not be a controversial personality, or his view and recommendations would be without effect. He must be recognized as impartial and must enjoy the respect and consideration of world public opinion and, in particular, the opinion of developing countries. The High Commissioner should also enjoy the independence necessary for the exercise of his functions; otherwise his would be but one more empty title among so many (E/AC.7/SR.572).

49. The representative of Iraq in the Commission on Human Rights, said that the High Commissioner must possess the degree of independence and prestige required for the performance of his functions. His prestige, however, would be determined by the nature of his functions (E/CN.4/SR.939).

50. The representative of the Philippines indicated that certain safeguards were contained in operative paragraph 1 and it was clear that the High Commissioner would perform his functions under the authority of the General Assembly (E/AC.7/SR.573).

51. The representative of Poland in the Third Committee indicated that despite the assurances given, the High Commissioner would compete with international machinery based on the Charter and on conventions ratified by States. Moreover, the functions of the High Commissioner would duplicate to a considerable extent the functions of other organs such as the Commission on Human Rights and the Secretariat's Division of Human Rights, while also limiting the competence of the Secretary-General in human rights matters. As to the idea's practical implications, it was obvious from past experience that such an office would be converted into an administrative apparatus and would thus duplicate work of the competent units of the Secretariat (A/C.3/SR.1730).

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52. The representative of the United States of America in the Third Committee, speaking in support of the creation of this post, noted that the fear had been expressed that the position of High Commissioner would duplicate existing United Nations machinery or would interfere with human rights mechanisms established under various conventions. She pointed out that Economic and Social Council resolution 1237 (XLII) made it clear that the High Commissioner could not infringe upon the pre-eminent competence of the Secretary-General, or that of any United Nations organ, nor would his functions interfere with mechanisms envisaged in international human rights conventions. The United States representative also noted that operative paragraph 1 of that resolution emphasized that the High Commissioner should enjoy independence and prestige. He should be able to distinguish basic human rights considerations from the accessory elements which varied from country to country and to command the prestige enjoyed by a distinguished personality respected for the scope of his experience and knowledge (A/C.3/SR.1726).

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III. OPERATIVE PARAGRAPH 2 OF THE DRAFT RESOLUTION: FUNCTIONS AND
DUTIES OF THE HIGH COMMISSIONER

53. Operative paragraph 2 of the draft resolution recommended by the Economic and Social Council in resolution 1237 (XLII) reads as follows:

"Instructs the United Nations High Commissioner for Human Rights to assist in promoting and encouraging universal and effective respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, as set forth in the Charter of the United Nations and in declarations and instruments of the United Nations or of the specialized agencies, or of intergovernmental conferences convened under their auspices for this purpose without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international conventions on the protection of human rights and fundamental freedoms; in particular:

"(a) He shall maintain close relations with the General Assembly, the Economic and Social Council, the Secretary-General, the Commission on Human Rights, the Commission on the Status of Women and other organs of the United Nations and the specialized agencies concerned with human rights, and may, upon their request, give advice and assistance;

"(b) He may render assistance and services to any State Member of the United Nations or member of any of its specialized agencies or of the International Atomic Energy Agency, or to any State Party to the Statute of the International Court of Justice, at the request of that State; he may submit a report on such assistance and services with the consent of the State concerned;

"(c) He shall have access to communications concerning human rights, addressed to the United Nations, of the kind referred to in Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959 and may, whenever he deems it appropriate, bring them to the attention of the Government of any of the States mentioned in sub-paragraph (b) above to which any such communications explicitly refer;

"(d) He shall report to the General Assembly through the Economic and Social Council on developments in the field of human rights, including his observations on the implementation of the relevant declarations and instruments adopted by the United Nations and the specialized agencies, and his evaluation of significant progress and problems; these reports shall be considered as separate items on the agenda of the General Assembly, the Economic and Social Council and the Commission on Human Rights, and before submitting such reports, the High Commissioner shall consult, when appropriate, any Government or specialized agency concerned, taking due account of these consultations in the preparation thereof;"

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A. General Comments

54. The representative of Costa Rica indicated in the Third Committee that the basic duty of the High Commissioner would be to ensure the promotion and observance of human rights, as they were defined by the United Nations (A/C.3/SR.1726).

55. The representative of Czechoslovakia in the Social Committee of the Economic and Social Council said that the proposed terms of reference were ambiguous and could be viewed from two angles. It might seem from a superficial examination that they were so weak that the High Commissioner would have no new functions to perform and would be merely duplicating the functions of existing organs. In the introductory part of operative paragraph 2, the High Commissioner was instructed to "assist in promoting and encouraging universal and effective respect for human rights and fundamental freedoms", but that was a function which had been entrusted by the Charter to the Economic and Social Council and delegated to the Commission on Human Rights. It should also be pointed out that a basic concept of the United Nations was that of collective responsibility of Member States for development in the field of human rights, as in other fields. Under the Charter, primary responsibility for the promotion of respect of human rights lay in collective bodies such as the General Assembly, the Economic and Social Council, the Security Council (E/AC.7/SR.573).

56. The representative of France noted that the text of the resolution had been deliberately prepared to avoid any impression of infringements of the Charter or of the sovereignty of States, and every effort had been made to avoid derogating from the competence of United Nations organs under the Charter. He drew attention in that regard to the wording of the introductory part of operative paragraph 2, particularly the expression "assist in promoting" and the references to the Charter and declarations and instruments of the United Nations (A/AC.7/SR.573).

57. In commenting on this paragraph, the representative of Iraq in the Commission on Human Rights said that according to operative paragraph 2, the human rights and fundamental freedoms which the High Commissioner would be empowered with promoting and encouraging, were qualified by the phrase "as set forth in the Charter of the United Nations or of the specialized agencies or of inter-governmental conferences convened under their auspices". She noted that in paragraph 31 of the Report of the Working Group that had been established by the Commission on Human Rights to

study the proposal to create the institution of High Commissioner for Human Rights, it was stated that the Working Group had agreed not to include resolutions in that context, since they commanded less general support than declarations and conventions. She entirely failed to see how resolutions unanimously adopted by the General Assembly on highly important subjects could be deemed to command less general support than declarations and conventions adopted by intergovernmental conferences (E/CN.4/SR.939).

58. The representative of the United Soviet Socialist Republic in the Commission on Human Rights, indicated that the resolution gave a false impression that the institution of a High Commissioner's office was provided for in the Charter or in other international instruments. On the contrary, the provisions of the Preamble to, and Article 1 of, the Charter made it clear that the only effective means of protecting human rights and fundamental freedoms was international co-operation and concerted action by all Members of the United Nations (ibid.).

B. First amendment submitted by the United Republic of Tanzania

59. The first amendment submitted by the United Republic of Tanzania in the Council proposed to add the words "especially the Universal Declaration of Human Rights" to the introductory part of operative paragraph 2.

2. This paragraph with the amendment would then read:

"Instructs the United Nations High Commissioner for Human Rights to assist in promoting and encouraging universal and effective respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, as set forth in the Charter of the United Nations and in declarations and instruments of the United Nations, especially the Universal Declaration of Human Rights, or the specialized agencies, or of intergovernmental conferences convened under their auspices for this purpose without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international conventions on the protection of human rights and fundamental freedoms; in particular."

60. The Government of Costa Rica and the United States (A/7498, annex III) both supported this amendment which, in their view, would insert a specific reference to the Universal Declaration of Human Rights.

61. The representative of France in the Social Committee of the Economic and Social Council said that he felt that it would be preferable not to refer specifically to the Universal Declaration of Human Rights. This was, moreover,

the conclusion which had been reached by the Working Group. If that course was not followed, it would be necessary to enter into details of all the instruments relating to human rights and to set up a sort of hierarchy of the relevant international conventions, covenants and so on (E/AC.7/SR.5.75).

C. Article 2, paragraph 7, of the Charter of the United Nations

62. The representative of Cuba in the Third Committee considered the proposal to appoint an individual as High Commissioner for Human Rights and empower him to intervene in essentially domestic matters to be dangerous to the interests of small states and that it was inconceivable that such an individual would not be subject to imperialist and colonialist pressures (A/C.3/SR.1731).

63. The representative of France pointed out that an objection to establishing this post was that such a post would constitute an interference in the internal affairs of States. However, the High Commissioner would be acting in a purely consultative capacity; moreover, operative paragraph 2 of resolution 1237 (XLII) contained no reference to the right of petition; it provided only for promotion, advice and assistance, subject to the agreement of States (A/C.3/SR.1730).

64. The representative of India in the Social Committee of the Economic and Social Council indicated that the relationship between the institution and Article 2, paragraph 7, of the Charter needed clarification and that inevitably the possibility of a conflict with that Article would arise under such a proposal (E/AC.7/SR.574).

65. The representative of Syria in the Third Committee was of the view that unlimited powers would be conferred on the High Commissioner and they would represent an encroachment on Article 2, paragraph 7 of the Charter and could lead to abuse and excess of power (A/C.3/SR.1731).

66. The representative of the Union of Soviet Socialist Republics in the Third Committee said that the obvious aim of the imperialist Powers, which were losing their dominant position in the representative bodies of the United Nations, was to use a one-man institution - which the High Commissioner would be - as a tool for applying pressure and interfering in the internal affairs of States (A/C.3/SR.1726).

67. The representative of the United Kingdom in the Social Committee of the Economic and Social Council said that the High Commissioner should be an individual, outside the political arena of the United Nations, with powers to report on the status of human rights that should not involve interference in the domestic affairs of States, nor should it conflict with Article 2, paragraph 7, of the Charter (E/AC.7/SR.574).

68. The representative of the United Republic of Tanzania said that in defining the powers of the High Commissioner, a study must be made of the compatibility of those powers with the requirements of Article 2, paragraph 7 of the Charter and the rights of any State which was investigated on the ground of flagrant violation of Human Rights to invoke Article 2, paragraph 7 as a defence against such action (E/AC.7/SR.572).

D. International human rights machinery under United Nations conventions

69. Operative paragraph 2 of Council resolution 1237 (XLII) further provides that the High Commissioner is to perform certain duties "without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international conventions on the protection of human rights and fundamental freedoms".

70. The representative of Belgium in the Social Committee of the Economic and Social Council, noted that the provision in operative paragraph 2, that the High Commissioner should act without prejudice to the functions and powers of organs already in existence, or which might be established, was wise, since duplication must obviously be avoided (E/AC.7/SR.574).

71. The representative of Canada in the Third Committee, also was of the opinion that the High Commissioner would complement rather than duplicate the existing United Nations machinery in that field. The Human Rights Committee to be established under article 28 of the International Covenant on Civil and Political Rights was not an obstacle to the creation of the post, because, apart from the fact that neither the Covenant nor the Optional Protocol thereto had yet come into force, the functions of the Committee and those of the High Commissioner would be very different; the Committee would carry on its business publicly while the High Commissioner would have a degree of independence, prestige, authority and flexibility that would inevitably be lacking in a body like the Human Rights Committee (A/C.3/SR.1727).

72. The representative of France in the Social Committee of the Economic and Social Council was of the opinion that the High Commissioner would not have a completely free hand and that his duties would be without prejudice to the functions and powers of organs already in existence (E/AC.7/SR.573).

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73. The representative of the Philippines said the intention of the resolution was to provide for the observance of human rights also by means of other covenants and declarations, which embodied their own implementation procedures (ibid.)

74. The representative of the United States of America in the Social Committee of the Economic and Social Council said that although the resolution did not spell out the High Commissioner's relationship to other United Nations bodies, that question had been discussed by the Working Group, which had decided that his functions should not encroach on the co-ordination functions of the Council or on those of other organs or agencies already established or to be foreseen under relevant international instruments. He recalled in particular the constitutions of the ILO and UNESCO, the International Covenants on Human Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination (E/AC.7/SR.573).

E. Particular functions of the High Commissioner

75. The opening words of operative paragraph 2 conclude with the phrase "in particular" which is followed by four sub-paragraphs outlining specific duties that the High Commissioner is to perform.

76. The representative of Czechoslovakia in the Social Committee of the Economic and Social Council was of the opinion that the proposed terms of reference for the High Commissioner were ambiguous and the vagueness of those terms were illustrated by the words "in particular" at the end of the introductory part of operative paragraph 2 (E/AC.7/SR.573). He believed the innocence of the resolution was only apparent, the object had been to overcome the opposition of those who would be against such an institution if it was openly granted powers which were too wide. He suggested that the institution might, by clever manipulation, exercise powers which were not vested by the Charter in any United Nations organ (E/AC.7/SR.573).

77. In the view of the representative of the United States in the Social Committee of the Economic and Social Council the provisions of the resolution were flexible enough to permit development, but also set realistic limits (E/AC.7/SR.573).

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(i) Sub-paragraph (a): maintaining relations with international bodies

78. The first particular function is provided in sub-paragraph (a) of operative paragraph 2 which instructs the High Commissioner that he "maintain close relations with the General Assembly, the Economic and Social Council, the Secretary-General, the Commission on Human Rights, the Commission on the Status of Women and other organs of the United Nations and the specialized agencies concerned with human rights and, may, upon their request, give advice and assistance."

79. The representative of Costa Rica in the Third Committee said the High Commissioner, as a basic rule of conduct, would maintain close relations with all organs competent in the field of human rights, whose functions and powers would not be impaired by the establishment of the High Commissioner's office (A/C.3/SR.1726).

80. The representative of Iraq in the Commission on Human Rights, said the High Commissioner was to maintain close relations with the General Assembly and other organs concerned with human rights and might, upon their request, give advice and assistance. If that provision was interpreted literally, the High Commissioner could take no action unless his advice and assistance were requested. However, she said that did not correspond with paragraph 21 of the Working Group's report which indicated that "the institution should maintain close relations with the organs concerned and that this would provide an adequate basis for the exercise of initiative without derogating from the concept that advice and assistance should be extended formally by the institution only on request". That passage of the report made it clear that the Working Group wished the High Commissioner to act on his own initiative (E/CN.4/SR.939).

81. The representative of the Philippines in the Social Committee of the Economic and Social Council, indicated that the High Commissioner would maintain close relations with the various international bodies concerned with human rights, although he would only be empowered to give advice and assistance to such organs upon their request. If no request was forthcoming he could not act (E/AC.7/SR.573).

82. The representative of the United States of America in the Third Committee said the High Commissioner's powers would be limited and his functions would be essentially advisory and performed basically at the invitation of Member States and United Nations bodies (A/C.3/SR.1726).

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(ii) Second amendment submitted by the United Republic of Tanzania

83. The second amendment submitted by the United Republic of Tanzania proposed to add a new sub-paragraph after sub-paragraph (a) which reads as follows:

"He shall initiate action where necessary to promote, encourage and strengthen universal and effective respect for human rights and fundamental freedoms".

84. In the comments submitted by the Government of Costa Rica on Council resolution 1237 (XLII) (A/7498, annex III), Costa Rica reserved its position on the second Tanzanian amendment until it could better appreciate the implications of entrusting the High Commissioner with new and more extensive functions.

85. The representative of France in the Social Committee of the Economic and Social Council said that the second Tanzanian amendment did not belong in the resolution, because it related to the general terms of reference of the High Commissioner, which had already been set out at the beginning of paragraph 2. Also the idea contained in the proposed sub-paragraph was dealt with in sub-paragraphs (a), (b), (c) and (d) of paragraph 2. If the Tanzanian amendment was adopted, it would be either superfluous or ambiguous, and he would therefore vote against it (E/AC.7/SR.575).

86. In its comments on Council resolution 1237 (XLII) (A/7498, annex III), the Government of the United States of America indicated that it supported the second Tanzanian amendment which provides that the High Commissioner "initiates action where necessary" for the purposes stated. Because of its importance, it would prefer to see this amendment incorporated in the lead section of operative paragraph 2 rather than as a sub-paragraph. If the lead section were so adopted, taking the first amendment also into account, the entire section would read (additions underlined):

"2. Instructs the United Nations High Commissioner for Human Rights to assist in efforts, and to initiate action as necessary, to promote and encourage universal and effective respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, as set forth in the Charter of the United Nations, the Universal Declaration of Human Rights, and in other declarations and instruments of the United Nations or of..." (A/7498, annex III).

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(iii) Sub-paragraph (b): assistance and services

87. According to this sub-paragraph, the High Commissioner "may render assistance and services to any State Member of the United Nations or member of any of its specialized agencies or of the International Atomic Energy Agency or to any State Party to the Statute of the International Court of Justice, at the request of that State; he may submit a report on such assistance and services with the consent of the State concerned".

88. The representative of Canada in the Third Committee pointed out that the High Commissioner, as the agent for the world community, would ensure respect for human rights as far as possible; he would not, however, be able to offer his services to a State without the latter's explicit invitation to do so - a point that was made very clear in paragraph 2 (b) of the resolution (A/C.3/SR.1727).

89. In the view of the representative of Czechoslovakia, sub-paragraph (b) was superfluous as there was already an established system of advisory services in the field of human rights (E/AC.7/SR.573).

90. The representative of Dahomey in the Commission on Human Rights said that paragraph 2, sub-paragraph (b), specified that the High Commissioner would render assistance when he deemed it desirable and would submit a report on his services "with the consent of the State concerned". The good offices of the High Commissioner would thus be informal if the State concerned so desired (E/CN.4/SR.938).

91. The representative of France in the Social Committee of the Economic and Social Council said the resolution referred to the possibility of assistance to Governments on their request. There was scepticism in some quarters as to the likelihood of Governments asking for assistance in that field, but the existing advisory services programme had functioned for some time and achieved certain results. A State might welcome technical assistance in dealing with problems such as slavery and other practices of which it disapproved involving violations of human rights which attracted world wide attention. A High Commissioner could discreetly draw the attention of the State concerned to the matter (E/AC.7/SR.573).

92. The observer for Jamaica in the Social Committee of the Economic and Social Council, indicated that his functions would not be "mandatory"; expressions such as "at the request of that State" were to be found throughout the resolution (E/AC.7/SR.574).

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93. The representative of Norway in the Third Committee indicated that the resolution provided adequate safeguards against interference in the internal affairs of States, because the High Commissioner would be able to assist a State only when asked to do so and would not be able to enter into discussions with Governments about petitions from individuals or groups of individuals; he could not intervene in disputes between two or more States without the consent of each, and he could submit reports or assist Governments only with their consent (A/C.3/SR.1727).

94. The representative of Pakistan in the Social Committee of the Economic and Social Council stated that the High Commissioner would not be a supra-national authority but would only be able to assist States at their specific request. (E/AC.7/SR.573).

95. The representative of Panama in the Social Committee of the Economic and Social Council said the only criticism his delegation had of the resolution was that it was not effective enough. The victims of daily violations of their human rights would hardly be comforted by operative paragraph 2(b), which provided that the High Commissioner might render assistance to Member States but only at their request (*ibid.*).

96. The representative of the Union of Soviet Socialist Republics in the Commission on Human Rights said that the High Commissioner would be entitled to present observations to States and would consult them only as and when he saw fit to do so. He would be able to impose his decisions on the specialized agencies and his powers with regard to conventions on human rights would be greater than those of the General Assembly and much greater than those of the Secretary-General. It had also been pointed out that the High Commissioner would be entrusted with functions that were outside the competence of any United Nations organ. His powers were even beyond those conferred on the International Court of Justice by its Statute. Under Article 65(1), the Court could give an advisory opinion only at the request of a body authorized by or in accordance with the Charter, whereas the Working Group proposed that the High Commissioner should give advice and assistance, unasked and on his own initiative, not only to any organ of the United Nations, but even to Member States, whether they wanted it or not (E/CN.4/SR.939).

97. The representative of the Union of Soviet Socialist Republics in the Third Committee, noted that the High Commissioner would have no function which could not be performed in the vast and well-developed system of United Nations bodies which were concerned in a practical way with human rights. The services of a High Commissioner were not even necessary since the United Nations already had appropriate machinery for assisting States in matters pertaining to human rights in the form of the advisory services programme established under General Assembly resolution 926 (X). Consequently, the High Commissioner would only duplicate the functions of the Secretary-General in that area. It might be concluded that the High Commissioner's activities would inevitably be confined to making "observations" and drafting "reports", and hence that his sole contribution would be to the proliferation of documents, which had long been a serious problem for the United Nations. He wished to draw attention to the surprising similarity between operative paragraph 2 of the resolution outlining the High Commissioner's terms of reference, and paragraph 1(b) of Article 13 of the Charter, describing the functions of the General Assembly with regard to human rights. (A/C.3/SR.1726).

98. The representative of the United Arab Republic believed that the only practical functions which the High Commissioner could perform would be of a purely advisory and procedural nature, which was not enough to justify the creation of the post, especially since a programme of advisory services in the field of human rights already existed. As the representative of the Soviet Union had already pointed out, the High Commissioner could do nothing to prevent the more serious violations of human rights which were the primary responsibility of the representative organs of the United Nations, and if there was anything hindering the activities of those organs, it was not the absence of a High Commissioner, but the obstructionist policies of certain countries. (A/C.3/SR.1730).

99. The representative of the United Republic of Tanzania in the Social Committee of the Economic and Social Council noted that operative paragraph 2 indicated that the High Commissioner should consult various bodies or States before acting. If that were the rule, it was to be feared that the High Commissioner, after making his inquiry but before setting down his conclusions, might have to ask the opinion of the States or agencies involved and perhaps inquire whether they had any

objections. Such a procedure might involve much twisting and turning and could therefore not be accepted (A/C.7/SR.572). The representative of the United Republic of Tanzania in the Third Committee also wondered how appropriate it was to stipulate that the High Commissioner should have purely advisory functions and should in no circumstances intervene in problems of human rights which were within the exclusive competence of States, since in that case he would be unable to take immediate action (A/C.3/SR.1730).

100. The representative of the United States of America in the Third Committee said that the United Nations High Commissioner's functions would be performed at the invitation of Member States and his reporting functions were linked with an obligation to consult. As envisaged by the Economic and Social Council, the High Commissioner would thus not be an attorney-general or ombudsman representing individuals against Member States. His functions would rather be to facilitate the co-operative fulfilment by Member States of their Charter commitment to human rights. Without the co-operation of States, the High Commissioner would not be able to do much, since his contribution should stem not from power but from respect for his office and his important aims (A/C.3/SR.1726).

(iv) Sub-paragraph (c): communications concerning human rights addressed to the United Nations

101. This sub-paragraph provides that the High Commissioner "shall have access to communications concerning human rights, addressed to the United Nations, of the kind referred to in the Economic and Social Council resolution 728F (XXVIII) of 30 July 1959 and may, whenever he deems appropriate, bring them to the attention of the Government of any of the States mentioned in sub-paragraph (b) above to which any such communications explicitly refer."

102. The representative of Belgium in the Third Committee pointed out that the High Commissioner's terms of reference would enable him to draw attention to certain communications whose examination under the system established by the Economic and Social Council resolution 728F (XXVIII) had remained largely ineffectual (A/C.3/SR.1726).

103. The representative of Dahomey in the Commission on Human Rights, said that in order to carry out his functions, the High Commissioner would need to be informed

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about the situation concerning human rights. He should therefore have access to communications of the kind referred to in Economic and Social Council resolution 725 F (XXVIII) and the provision made in paragraph 2 (c) was essential, for that Council resolution restricted access to the relevant communications. He further indicated that the High Commissioner would be able to draw the special attention of certain States to certain communications emanating from those States; in that respect his role would differ from that of the Secretary-General, who had of necessity to confine himself to transmitting relevant communications to the States concerned. In that respect, therefore, the High Commissioner's functions would be of a selective nature (E/CN.4/SR.938).

104. The representative of France in the Social Committee of the Economic and Social Council, said that one consideration behind the movement for the establishment of a High Commissioner was perhaps the experience with regard to communications concerning human rights received by the United Nations. The United Nations had not, except in marginal cases, been able to examine the allegations in such communications (E/AC.7/SR.573).

105. The representative of Iraq in the Commission on Human Rights noted that under paragraph 2 (c) the High Commissioner was to have access to communications concerning human rights addressed to the United Nations. She pointed out that the Commission had adopted resolution 8 (XXIII) seeking authority from the Council for the Commission and its Sub-Commission on Prevention of Discrimination and Protection of Minorities to study such communications. The report of the Working Group did not make it clear what sources of information the High Commissioner could use which would not be available to the Commission. In the early stages of consideration of the proposal to appoint a High Commissioner, when the composition of the United Nations had been different and the institution was intended to be that of an Attorney-General's office, the sources from which the Attorney-General was to derive information had been clearly defined: he was to have access to all United Nations information and would be authorized to collect and examine other information, including reports submitted by States, laws, regulations, judicial decisions, records of parliamentary proceedings, press communiques, of national and international organizations, and information from individuals. That role, however, had now been entrusted to the Sub-Commission,

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and there seemed to be no need for a single individual to gather information from all sources. She saw no reason why the High Commissioner should be allowed to seek his own sources of information on independent States (E/CN.4/SR.939).

106. The representative of Israel on the Commission on Human Rights said that if the High Commissioner for Human Rights was authorized to receive communications addressed to the United Nations concerning violations of human rights and to make the necessary inquiries, it would probably be possible to take effective action against violations of the rights and freedom for which a world war had been waged (E/CN.4/SR.940).

107. The representative of Norway in the Third Committee favoured the proposal that the High Commissioner should have access to the human rights communications of the kind referred to in the Economic and Social Council resolution 728 F (XXVIII) and pointed out that the Commission on Human Rights had adopted resolution 17 (XXV) recommending a procedure for dealing more effectively with such communications. As the Commission and the Council would have to reconsider that proposal, his delegation felt that it might be useful at the same time to consider how the institution of the United Nations High Commissioner for Human Rights could be incorporated in the procedure, since close co-operation between the High Commissioner and the implementation machinery under the Commission would be very useful (A/C.3/SR.1727).

108. The representative of the Union of Soviet Socialist Republics in the Social Committee of the Economic and Social Council pointed out that paragraph 2 (c) showed a clear indication of nullifying Economic and Social Council resolution 728 F (XXVIII) by giving the High Commissioner access to communications concerning human rights and to contributions by non-governmental organizations under the periodic reporting system which were never published (E/AC.7/SR.572). The representative of the USSR in the Third Committee stated that certain functions of the High Commissioner might have a harmful effect on relations between States and on the general atmosphere within the United Nations. A case in point was the proposal that the High Commissioner should have access to communications on human rights and bring them to the attention of Governments when he considered it appropriate (A/C.3/SR.1726).

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(v) Sub-paragraph (d): reporting to the various bodies of the United Nations

109. This sub-paragraph directs the High Commission "to report to the General Assembly through the Economic and Social Council on developments in the field of human rights, including his observations on the implementation of the relevant declarations and instruments adopted by the United Nations and the specialized agencies, and his evaluation of significant progress and problems; these reports shall be considered as separate items on the agenda of the General Assembly, the Economic and Social Council and the Commission on Human Rights, and before submitting such reports, the High Commissioner shall consult, when appropriate, any Government or specialized agency concerned, taking due account of these consultations in the preparation thereof."

110. The representative of Belgium in the Third Committee said the practical implementation of paragraph 2 (d) would have good results provided that the subject matter of the reports to be submitted to the General Assembly by the High Commissioner could be clarified as he performed his duties. The High Commissioner could make useful evaluations of the progress made in certain spheres, particularly with regard to the implementation of the declarations and instruments of the United Nations, and indicate the important problems still outstanding, the general lines of modern legislation and the practice followed by States in human rights questions. The High Commissioner would undoubtedly have an important role to play in co-ordinating the work of his office with that of the committees to be established when the International Covenants on Human Rights came into force and the Committee set up as a result of the entry into force of the International Convention on the Elimination of All Forms of Racial Discrimination. The General Assembly for its part, would provide the essential functional link between those committees and the High Commissioner (A/C.3/SR.1726).

111. The representative of Czechoslovakia in the Social Committee of the Economic and Social Council noted that sub-paragraph (d) would duplicate existing procedures since there was an elaborate system of reporting under the resolutions concerning periodic reports on human rights, and, for States which ratified or acceded to the International Covenants on Human Rights, and other international instruments dealing with human rights questions, special reporting systems had been established (E/AC.7/SR.573).

112. The representative of Dahomey in the Commission on Human Rights, said under paragraph 2(d), the High Commissioner would report to the General Assembly; it was important that the Assembly should be informed of all "developments" in the field of human rights, once the High Commissioner had duly evaluated them. In that clause, the sponsors of the resolution had taken care to guarantee that the Governments of such States as the High Commissioner might have occasion to mention in his reports would have the right to be consulted beforehand (E/CN.4/SR.938).

113. The representative of France in the Social Committee of the Economic and Social Council expressed the view that it was clear from operative paragraph 2 (d) that the High Commissioner was to consult any Government concerned before submitting his reports to the General Assembly and take due account of those consultations in the preparation of his report (E/AC.7/SR.573)

114. The representative of India in the Commission on Human Rights noted the powers conferred upon the High Commissioner under paragraph 2 (d) of the resolution. In his opinion it was important that such powers of investigation should be exercised only with the consent of the Governments concerned and subject to all the necessary restraints (E/CN.4/SR.940).

115. The Observer of Jamaica indicated that the last sentence of paragraph 2 (d) had been included because the Governments supporting the resolution felt that Governments had a right to be consulted (E/AC.7/SR.574).

116. The representative of Turkey in the Social Committee of the Economic and Social Council expressed reservations concerning the legal form to be given to the machinery provided for in paragraph 2 (d) which in his view seemed designed not only to promote but also to supervise respect for human rights. His delegation was reluctant to grant such wide powers by a simple resolution. Moreover, some elements of the proposed machinery could indirectly enable the High Commissioner to examine petitions from individuals. Furthermore, the distinction between the functions provided for in paragraphs 2 (c) and 2 (d) seemed a hazy one, since paragraph 2 (c) provided that the High Commissioner could bring communications concerning human rights to the attention of Governments, whereas according to paragraph 2 (d) the High Commissioner would, when appropriate, consult the Government concerned. In other words, such consultation was left to his discretion, from which his delegation concluded the

High Commissioner was under no obligation to consult the Government concerned. This must be clarified and stated unambiguously (E/AC.7/SR.575).

117. The representative of the Union of Soviet Socialist Republics in the Third Committee stated that the provisions of the resolution concerning the performance of the High Commissioner's functions in regard to the international agreements on human rights adopted by the United Nations and its specialized agencies violated the most elementary rules of international law. It was well known that the question of the implementation of international agreements concerned only the States Parties thereto and the bodies set up on the basis of such agreements. No other body had the right to interfere in the question of their implementation. The High Commissioner for instance, would have no competence to deal with the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, a matter which concerned the Committee set up for that purpose. As far as the States Parties to the Convention were concerned, the Committee would perform the functions which the resolution attempted illegally to confer on the High Commissioner (A/C.3/SR.1726).

118. The representative of the United Republic of Tanzania in the Social Committee of the Economic and Social Council said his delegation opposed the requirement that the High Commissioner report to the Secretary-General and the Economic and Social Council. If the High Commissioner was to be independent, he must be free to act without restriction and to carry out his functions appropriately (E/AC.7/SR.572).

(vi) Third amendment submitted by the United Republic of Tanzania

119. The Third amendment submitted by the United Republic of Tanzania proposed to delete the last line of sub-paragraph 2 (d), including the words "and before submitting such report the High Commissioner shall consult, when appropriate, any Government or specialized agency concerned, taking due account of these consultations in the preparation thereof ...". Paragraph 2 (d) with the amendment would then read:

(d) He shall report to the General Assembly through the Economic and Social Council on developments in the field of human rights, including his observations on the implementation of the relevant declarations and instruments adopted by the United Nations and the specialized agencies,

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and his evaluation of significant progress and problems; these reports shall be considered as separate items on the Agenda of the General Assembly, the Economic and Social Council and the Commission on Human Rights."

120. The representative of France commented on this amendment in the Social Committee of the Economic and Social Council, and said he failed to see what purpose it would serve. The specific aim of that sentence was to safeguard the sovereignty of States, which was one of the problems the Tanzanian representative had mentioned and the French delegation felt that the sentence should be retained (E/AC.7/SR.572).

IV. OPERATIVE PARAGRAPH 3 OF THE DRAFT RESOLUTION: APPOINTMENT
OF THE HIGH COMMISSIONER

121. Operative paragraph 3 reads as follows:

"Decides that the High Commissioner shall be appointed by the General Assembly, on the recommendation of the Secretary-General, for a term of five years, and that his emoluments shall not be less favourable than those of an Under-Secretary".

122. In the view of the representative of Dahomey, one of the sponsors of this resolution in the Commission on Human Rights, paragraph 3 set out the terms and conditions governing the appointment of the High Commissioner. Since his post was very important, that appointment must be made by the General Assembly. Since the High Commissioner would wield great moral authority, any open competition among several candidates for the post should be avoided. The Secretary-General would therefore submit a single candidate to the General Assembly after informal consultations. To enable the High Commissioner to achieve good results in the performance of his functions, he should be appointed for a reasonably long term, namely five years; and in view of the importance of those functions it was desirable to give him a very high position in the Secretariat, at least equal to that of an Under-Secretary (E/CN.4/SR.938).

123. The representative of Iraq indicated that the High Commissioner was to have a rank equal to that of an Under-Secretary; in earlier proposals, his rank was to have been that of a member of the International Court of Justice. It seemed illogical to her to place his office on the same footing as that of Under-Secretaries, none of whom bore such a heavy responsibility (*ibid.*).

124. In reply, the representative of Dahomey pointed out that the High Commissioner was to be placed on the same footing as an Under-Secretary, as his powers could not exceed those of an official at that level. However, there was nothing in the resolution to the effect that the functions of the High Commissioner would be on the same footing as those of an Under-Secretary: paragraph 3 merely stated that his emoluments would not be less favourable than those of an Under-Secretary (E/CN.4/SR.940).

125. The representative of the United Republic of Tanzania in the Social Committee of the Economic and Social Council, said it was impossible for his delegation to

agree to operative paragraph 3. The Secretary-General could not be given the task of nominating a High Commissioner; that was a matter for the General Assembly (E/AC.7/SR.572).

Fourth amendment submitted by the United Republic of Tanzania

126. The fourth amendment submitted by the United Republic of Tanzania in the Council proposed to replace the word "appointed" in paragraph 3 by the word "elected". The opening part of paragraph 3 with the amendment would then read "Decides that the High Commissioner shall be elected by the General Assembly, ...".

127. The Government of Costa Rica in its comments on resolution 1237 (XLII) and the Tanzanian amendments thereto indicated that it found acceptable the fourth amendment calling for the "election" of the High Commissioner. (A/7498, annex III).

128. The representative of France in the Social Committee of the Economic and Social Council said that the French delegation had no objection to that amendment (E/AC.7/SR.575).

129. The representative of Ghana in the Third Committee supported the fourth Tanzanian amendment and stated that the High Commissioner and his panel of experts should all be elected if they were to enjoy universal confidence and should come from neutral countries with a "clean" human rights record (A/C.3/SR.1731).

130. The representative of the United States of America in the Third Committee indicated that her delegation supported the Tanzanian amendment whereby the High Commissioner would be elected instead of appointed by the General Assembly. That procedure would be a further guarantee, in her view, that the High Commissioner would enjoy the trust of Member States (A/C.3/SR.1726).

V. OPERATIVE PARAGRAPH 4 OF THE DRAFT RESOLUTION: APPOINTMENT
OF A PANEL OF EXPERTS

131. Operative paragraph 4 reads as follows:

"Decides to establish a panel of expert consultants to advise and assist the High Commissioner in carrying out his functions; the panel shall not exceed seven in number, the members to be appointed by the Secretary-General in consultation with the High Commissioner, having regard to the equitable representation of the principal legal systems and of geographical regions; the terms of appointment of the members of the panel shall be determined by the Secretary-General, in consultation with the High Commissioner, and shall be subject to the approval of the General Assembly."

132. The representative of Belgium in the Social Committee of the Economic and Social Council said that the preparation of reports by the High Commissioner would be a delicate and difficult task which could lead to criticism, despite the panel of expert consultants (E/AC.7/SR.574).

133. The representative of Costa Rica in the Third Committee said the objection that a single individual could not properly discharge the duties of a High Commissioner because of the extremely diverse legal philosophies and concepts of the various groups of nations had been overcome by the provision for the establishment of a panel of expert consultants of different nationalities and legal backgrounds to advise and assist the High Commissioner in his consideration of the various situations placed before him (A/C.3/SR.1726).

134. The representative of Czechoslovakia in the Social Committee of the Economic and Social Council said that the High Commissioner would be responsible to no one, and the expert consultants provided for in operative paragraph 4 would hardly have the necessary powers to prevent High Commissioners from taking arbitrary decisions (E/AC.7/SR.573).

135. The representative of Dahomey in the Commission on Human Rights said that the provisions of paragraph 4, by which the General Assembly would establish a panel of expert consultants, were designed to allay the objections of all those who considered it dangerous to entrust to one individual the task of intervening in so delicate a matter as human rights. The sponsors of the draft resolution had wished to keep to a minimum the risks inherent in the fact that the High Commissioner would of necessity represent a single legal system and a single geographical region (E/CN.4/SR.938).

136. In the view of the representative of Iraq on the Commission on Human Rights, if the High Commissioner was to be vested with the high authority, independence and prestige described in other parts of the resolution, the qualifications and national affiliations of his advisers seemed immaterial (E/CN.4/SR.939).
137. The representative of Jamaica in the Commission on Human Rights expressed the opinion that the High Commissioner would be assisted by a panel of expert consultants drawn from different regions and social systems; that arrangement would be a pledge of objectivity (E/CN.4/SR.940). The Observer for Jamaica in the Social Committee of the Economic and Social Council recalled that the Soviet Union representative seemed to feel that the motive for the provision in operative paragraph 4 for a maximum of seven expert consultants was to give greater representation to the western European groups. It was her delegation which had urged the figure "seven" during the meetings of the Working Group, and its intention had been to allow for equitable representation of the principal legal systems as well as of geographical regions, as was made clear in the text itself (E/AC.7/SR.574).
138. The representative of Pakistan in the Social Committee of the Economic and Social Council pointed out that the panel of expert consultants to advise the High Commissioner in carrying out his functions would reduce the margin of error inevitably inherent in the exercise of individual judgement (E/AC.7/SR.753).
139. The representative of the Philippines in the Social Committee of the Economic and Social Council said that operative paragraph 4 provided for a panel of expert consultants to advise and assist him; they would be chosen with due regard to the equitable representation of the principal legal systems and geographical regions (ibid.).
140. In the Social Committee of the Economic and Social Council, the representative of the United Republic of Tanzania indicated that the panel of expert consultants which would assist the High Commissioner should be elected by the General Assembly and not designated by the Secretary-General (E/AC.7/SR.572).
141. The representative of the Union of Soviet Socialist Republics on the Commission on Human Rights indicated that the panel of expert consultants as envisaged, would be neither representative nor objective; the proposed method of appointment would leave the High Commissioner free to block the appointment of persons whose views did not coincide with his own (E/CN.4/SR.939). The

representative of the Union of Socialist Republics in the Social Committee of the Economic and Social Council could not support the proposal to establish the panel of expert consultants. In his view in the United Nations, as elsewhere in the United Nations family, the hierarchy began with a collective body, and the executive came next. The Commission on Human Rights wanted the Council to put the cart before the horse and to start by appointing an executive, assisted by a group of seven consultants. Why that number had been chosen it was impossible to say, as there were five continents. Perhaps the Western Powers wished to reserve three seats for themselves. There could be no logical basis for such membership (E/AC.7/SR.572).

142. The representative of the United Kingdom in the Third Committee said that the panel to be established under paragraph 4 would have a certain representation of membership and would be an adequate safeguard against abuse or excess of power (A/C.3/SR.1731).

143. The representative of the United States of America in the Third Committee did not believe that there was any danger of the High Commissioner advocating the human rights concepts of one region or legal system, to the detriment of the social ideas or realities of other regions or systems. The panel of experts mentioned in paragraph 4 provided a further guarantee that this post would be representative of the entire membership of the United Nations. Her delegation expected that the High Commissioner would work in close co-operation with those experts, so that he would be assisted in every case both by an expert in the social or legal system concerned, and by other experts whose joint experience would ensure that he adopted a tolerant and universal approach (A/C.3/SR.1726).

Fifth amendment submitted by the United Republic of Tanzania

144. The Fifth Amendment submitted by the United Republic of Tanzania in the Council proposed to replace the words "appointed by the Secretary-General in consultation with the High Commissioner", by the words "elected by the General Assembly on the basis of equitable geographical distribution". Paragraph 4, with the amendment, would then read:

"Decides to establish a panel of expert consultants to advise and assist the High Commissioner in carrying out his functions; the panel shall not exceed seven in number, the members to be elected by the General Assembly on the basis of equitable geographical distribution, having regard to the equitable representation of the principal legal systems and of geographical regions; the terms of appointment of the members of the panel shall be determined by the Secretary-General, in consultation with the High Commissioner, and shall be subject to the approval of the General Assembly ...".

145. In commenting on this amendment in the Social Committee of the Economic and Social Council, the representative of France, pointed out that in the French text the reference to the principal legal systems would remain, but that did not seem to be the intention of the Tanzanian representative. He would like some clarification of that point. He felt, moreover, that the two concepts namely, the equitable representation of the principal legal systems and of geographical regions, should be kept together. It might even happen, in an extreme case and through the play of circumstances, that the High Commissioner would have a panel of consultations who all belonged to countries whose legal systems were based on Roman law or on common law, and that was precisely what the paragraph in question was trying to avoid (E/AC.7/SR.575).

VI. OPERATIVE PARAGRAPH 5 OF THE DRAFT RESOLUTION: THE HIGH COMMISSIONER
AND THE SECRETARY-GENERAL

146. Operative paragraph 5 provides:

"Invites the High Commissioner to conduct his office in close consultation with the Secretary-General and with due regard for the latter's responsibilities under the Charter ...".

147. In the comments submitted by the Government of Costa Rica pursuant to the Economic and Social Council resolution 1238 (XLII) it was pointed out that "the High Commissioner and the panel of expert consultants assigned to him would always work in close consultation with the Secretary-General and would always take into account the responsibilities of the Secretary-General, who, under the United Nations Charter, is the Chief Administrative Officer of the United Nations" (A/7498, annex III).

148. The representative of Dahomey in the Commission on Human Rights, said the sponsors of the resolution, in paragraph 5, made the point that, although the High Commissioner would enjoy the widest possible autonomy, he would have to act within the Secretariat of the United Nations: i.e. in consultation with the Secretary-General, the head of the Secretariat (E/CN.4/SR.939).

149. The representative of Iraq, believed that operative paragraph 5 was somewhat inapt: the Secretary-General of the United Nations bore responsibilities under the Charter for maintaining the integrity of the basic instrument, whereas the High Commissioner, even if he was appointed with the grade of an Under-Secretary, would bear no such responsibility.

150. The representative of Norway in the Third Committee pointed out that the work of the High Commissioner should not reduce the responsibility of the Secretary-General in the field of human rights as delegated to the Director of the Division of Human Rights. The High Commissioner should be an additional element in the promotion of human rights (A/C.3/SR.1727).

151. The representative of Poland, said it was obvious that despite the assurances given, the functions of the High Commissioner would duplicate to a considerable extent the functions of other organs such as the Commission on Human Rights and the Secretariat's Division of Human Rights while also limiting the competence of the Secretary-General on Human Rights matters (A/C.3/SR.1730).

152. The representative of the Union of Soviet Socialist Republics in the Commission on Human Rights was also critical of operative paragraph 5. He pointed out that the Secretary-General's powers under article 102, paragraph 1, of the Charter in relation to international treaties were limited to their registration and publication, but the Working Group had considered a suggestion that the High Commissioner should keep watch over compliance with them (E/CN.4/SR.939). The representative of the Union of Soviet Socialist Republics in the Social Committee of the Economic and Social Council added that the office of High Commissioner could not be compared with that of the Secretary-General. As chief administrative officer of the United Nations, the Secretary-General had certain clearly defined functions concerning inter-State relations. Human rights, on the other hand, involved questions of ideology; the concept of democracy varied according to one's ideological viewpoint (E/AC.7/SR.574).

153. The comments submitted by the Government of the United States of America pursuant to the Economic and Social Council resolution 1238 (XLII), indicated that "because the need is to expand and make full use of all United Nations resources, there should be no confusion on the relation of the High Commissioner for Human Rights to the Human Rights Division in the United Nations Secretariat. The High Commissioner would be a new element, quite independent of existing services. He would have no responsibility for administration except for his own small technical staff and his work would not reduce the responsibility of the Director of the Human Rights Division (A/7498, annex III, p. 13).

VII. OPERATIVE PARAGRAPH 6 OF THE DRAFT RESOLUTION: ASSISTANCE TO
THE HIGH COMMISSIONER BY THE SECRETARY-GENERAL

154. Operative paragraph 6 provides:

"Requests the Secretary-General to supply the High Commissioner with all the facilities and information required for carrying out his functions ...".

155. The representative of Syria in the Third Committee pointed out that under the terms of Council resolution 1237 (XLII), paragraph 6, the Secretary-General himself would become an appendage of the High Commission's Office. The inclusion of such provisions was an attempt to dilute the powers of the Secretary-General, who over the years had come to occupy a special position in the United Nations system which had not originally been envisaged in the Charter. The creation of the post of High Commissioner for Human Rights might well prove detrimental to the Secretary-General's highly successful role in solving human rights problems through discretion and diplomacy. (A/C.3/SR.1731).

VIII. SIXTH AMENDMENT SUBMITTED BY THE UNITED REPUBLIC OF TANZANIA

156. The sixth amendment submitted by the United Republic of Tanzania in the Council proposed the elaboration of a convention that would establish the post of High Commissioner for Human Rights. The amendment would add a new paragraph 6, as follows:

"Decides to elaborate during its twenty-second session an appropriate convention which the High Commissioner and his Office shall operate."

157. The Government of Costa Rica stated that "the effect of the sixth amendment would be to postpone the establishment of the High Commissioner's office until the approval, signature and ratification of a specific convention on the powers and procedures of the Office. This amendment is completely unacceptable because its acceptance would result in the indefinite postponement or complete abandonment of the proposal" (A/7498, p. 5).

158. In commenting on this proposed amendment, the representative of France in the Social Committee of the Economic and Social Council said it represented a request to the General Assembly to elaborate an appropriate convention to govern the powers of competence and procedures, under which the High Commissioner and his office would operate. The French delegation could not vote for an amendment of that kind, for it was contrary to the underlying spirit of the draft resolution relating to the establishment of a post of High Commissioner. The Working Group appointed to deal with that question had already given its decision, namely that no convention should be elaborated for that purpose (E/AC.7/SR.575).

159. The representative of Ghana in the Third Committee said he had doubts as to the need for drawing up a convention, as envisaged in the proposed new paragraph 6, since the functions and powers of the High Commissioner could be defined in the resolution creating the post or in an annex to the resolution (A/C.3/SR.1731).

160. The representative of the Netherlands in the Third Committee pointed out that since the new United Nations official and his staff would perform their functions under the authority of the General Assembly, she thought that the proposed post could be established by a resolution of the Assembly without the need to conclude a convention in the matter (A/C.3/SR.1726). In the comments

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submitted by the Government of the Netherlands in accordance with Council resolution 1237 (XLII), it was of the opinion that the institution of a High Commissioner for Human Rights fell squarely within the powers conferred upon the United Nations by the Charter and, there being no need to conclude a special treaty for this purpose, could legitimately be established by a resolution of the General Assembly (A/7498, annex III).

161. The representative of the Union of Soviet Socialist Republics in the Third Committee said the resolution attempted to confer upon the High Commissioner a competence such as that held by the General Assembly, thus making them rivals, or to persuade the High Commissioner to usurp the General Assembly's powers in the field of human rights. It was nothing but an attempt to undermine the Charter and do serious damage to the most representative body of the United Nations. In that connexion, grave doubts arose as to whether the General Assembly was competent to take the decision to create the post of High Commissioner (A/C.3/SR.1726).

162. The representative of the United Arab Republic in the Third Committee said that doubts and misgivings had been raised as to whether the General Assembly was authorized to establish the institution of the High Commissioner (A/C.3/SR.1730).

163. The representative of the United Kingdom in the Third Committee was of the view that such a treaty would inevitably constitute alternative implementation machinery rivalling that of the Covenants on Human Rights and its operation would be limited to those States acceding to the treaty. He also did not consider that it was necessary to create the post by an international convention, since the General Assembly was quite competent to do so and it was better to avoid too legalistic an approach to the establishment of machinery which would be the basis for informal and private considerations of human rights questions (A/C.3/SR.1731).

164. The representative of the United Republic of Tanzania in the Social Committee of the Economic and Social Council, said it seemed to him that a convention or some other similar instrument might be the best way of clearly establishing the terms of reference and the competence of a High Commissioner (E/AC.7/SR.572).

165. The Government of the United States of America indicated that it was also opposed to the sixth amendment, which would require a new convention to define the powers of competence and procedures for the High Commissioner. The analytical and technical study prepared by the Secretary-General (E/CN.4/AC.21/L.1) made it

clear that the General Assembly already had the authority to establish this new office. The Assembly used these powers in establishing the Office of the High Commissioner for Refugees. It was clearly competent to determine the powers and procedures to govern any office it had the authority to create (A/7498, annex III). The representative of the United States in the Third Committee said she believed that the General Assembly was fully competent to create a post of United Nations High Commissioner for Human Rights and that an international convention for that purpose would not be necessary (A/C.3/SR.1726).

IX. OPERATIVE PARAGRAPH 7 OF THE DRAFT RESOLUTION: FINANCIAL IMPLICATIONS

166. Operative paragraph 7 reads as follows:

"7. Decides that:

"(a) The Office of the High Commissioner shall be financed under the regular budget of the United Nations;

"(b) Within the limits of the budgetary appropriation provided and on the recommendation of the High Commissioner, the staff of the Office of the High Commissioner shall be appointed by the Secretary-General and such staff shall be subject to the conditions of employment provided under the Staff Regulations of the United Nations adopted by the General Assembly and the Staff Rules promulgated thereunder by the Secretary-General;

"(c) Provision may also be made to permit the employment of personnel without compensation or on a fee basis for special assignments;

"(d) The administration of the Office of the High Commissioner shall be subject to the Financial Regulations of the United Nations and to the Financial Rules promulgated thereunder by the Secretary-General and the accounts relating to the Office of the High Commissioner shall be subject to audit by the United Nations Board of Auditors."

167. The representative of Ceylon in the Third Committee supported the draft resolution but felt that its financial complications should be very carefully considered so as not to drain the human rights activities (A/C.3/SR.1731).

168. The representative of Dahomey in the Commission on Human Rights noted that the provisions of paragraph 7 were financial and administrative. The staff of the High Commissioner's Office would be appointed by the Secretary-General for they would be Secretariat staff members. However, the appointments would be made on the High Commissioner's recommendation, for the officials concerned would be working for him (E/CN.4/SR.938).

169. In his statement of administrative and financial implications of the proposal prepared for the twenty-third session of the General Assembly, the Secretary-General suggested that, in addition to the panel of experts and the services that would be assumed by the Secretariat, "it is initially proposed that a small staff comprising a special assistant (P-5), two other professional officers (P-5 and P-3), and four general service staff (three secretaries and one clerk) be provided..." (A/C.3/L.1620).

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170. The representative of Saudi Arabia in the Third Committee did not consider the statements of financial implications submitted by the Secretary-General (A/C.3/L.1728) to be a practical estimate of the real expense of the creation of the post of High Commissioner, as it could safely be assumed that the High Commissioner would every year receive millions of petitions, the processing of which alone would entail a heavy expenditure (A/C.3/SR.1731). He later added that it was imperative to give very careful consideration to the financial implications of the proposals. Whereas the expenses incurred by the United Nations High Commissioner for Refugees and his Office were more or less static, those for the proposed Commissioner for Human Rights would almost certainly expand very rapidly. The post of United Nations High Commissioner for Refugees was financed by voluntary contributions, whereas the proposed new post would come under the United Nations budget. He feared that the project would not be financially viable (ibid.).

171. The representative of the Sudan in the Third Committee said it should be pointed out that the States proposing this office, which had on numerous occasions spoken against the waste of United Nations funds, had not said a single word against the inordinate expenditure which would be involved in the establishment of the post of High Commissioner (A/C.3/SR.1730).

172. The representative of the Union of Soviet Socialist Republics in the Social Committee of the Economic and Social Council said the expenditure involved in creating the post of High Commissioner for Human Rights would be far too heavy. Some delegations did not seem to be unduly concerned at such a prospect; but his delegation did not intend to squander the public funds of the Soviet State. The proposed expenditure would be not only excessive but unnecessary, for it would do nothing for the cause of human rights. Even if the post was created over the opposition of a substantial minority which was determined not even to contribute to the cost, he wondered whether anyone could be found to occupy it (E/AC.7/SR.572).

173. In the Third Committee, the representative of the Union of Soviet Socialist Republics again referred to the financial implications of the creation of the post of High Commissioner (as stated in A/C.3/L.1728, annex I) and pointed out that the costs of the staff to be placed at the disposal of the High Commissioner at the initial stage would amount to \$283,300 in 1970. Later the staff would be enlarged on the basis of demands that would be made upon his services. It was clear, that

the costs of such a post would be a heavy burden on the United Nations budget and might become ruinous. The United Nations, whose financial situation was far from satisfactory, could not afford such wastefulness (A/C.3/SR.1726).

174. The representative of the United Kingdom said that the Third Committee should not discuss the financial implications of the creation of a post which represented a significant break-through in the field of human rights and was therefore worth the cost. On seeing the estimates prepared (in A/C.3/L.1728, paragraph 6) his delegation considered that much was to be gained from a relatively modest expenditure (A/C.3/SR.1731).

175. The representative of Uruguay in the Third Committee considered that the protection of human rights and human dignity could not be evaluated in terms of money and that the expense which the proposed post entailed was therefore quite justified (ibid.).

176. The representative of the Secretary-General pointed out in the Third Committee that it was not easy to estimate the financial implications of the creation of a new institution. The Secretariat's estimates had originally been established in 1966 and had been brought up to date in the light of the rising costs pertaining to certain items. As indicated in document A/C.3/L.1728, paragraph 5, the staff estimates had been based on the assumption that the High Commissioner would initially need a small staff to put his office in operation; after the initial year, estimates would be evaluated in the light of subsequent requirements and the views of the High Commissioner would be heard. The estimates given in document A/C.3/L.1728 related to the first year of operation of the Office of the High Commissioner for Human Rights (ibid.).

X. SEVENTH AMENDMENT SUBMITTED BY THE UNITED REPUBLIC OF TANZANIA

177. The seventh amendment submitted by the United Republic of Tanzania reads as follows:

"Decides to invite the Director-General of the International Labour Office to submit to the General Assembly, for its guidance and assistance at its forthcoming session, a report on the experience of the ILO in the field of implementation of human rights in its sphere of competence."

178. The representative of the Philippines in the Third Committee indicated that the proposed new paragraph 7 was superfluous because the Director-General of the ILO had already submitted the report in question (A/7498, annex IV and A/C.3/SR.1727).

179. The representative of the Secretary-General in the Third Committee also pointed out that in resolution 1237 (XLII) the Economic and Social Council had requested the Secretary-General to invite the Director-General of the International Labour Office and the Director-General of UNESCO to submit to the General Assembly a report on their experience in the field of implementation of human rights in their spheres of competence. The information received from the two organizations pursuant to the resolution was reproduced in annex IV of the Secretary-General's note on the creation of the post of High Commissioner (A/7498). It should be noted, however, that the information did not refer specifically to the creation of the post of High Commissioner for Human Rights but dealt with the implementation of instruments adopted by those organizations in the field of human rights.

XI. ALTERNATIVE INTERNATIONAL MACHINERY

180. The title of Economic and Social Council resolution 1237 (XLII) is "Question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery". This was also the title of the item on the agenda of the Commission on Human Rights.

181. During the debates in the various United Nations bodies seized with this issue, attention was given to establishing some other appropriate machinery instead of establishing the post of United Nations High Commissioner for Human Rights.

182. The observer for Jamaica speaking before the Social Committee of ECOSOC, stated that the report of the Working Group (E/CN.4/934) that had been established by the Commission on Human Rights, made it clear that attention had been given to alternative machinery such as a collegiate body in place of the High Commissioner, but the fact was that members had favoured a High Commissioner. The Working Group had been ready to consider alternative proposals but none had been offered (E/AC.7/SR.574).

183. The representative of Saudi Arabia in the Third Committee noted that some years previously he had suggested, in view of the insurmountable difficulties resulting from the different systems in the world, that each country should have its own High Commissioner for Human Rights, whose name would be registered with the United Nations. He further stated the most effective way of ensuring human rights was to familiarize the peoples of the world with the United Nations instruments in this field. To this end he proposed that in a joint venture with UNESCO, a satellite might be leased from COMSAT and the United Nations could then educate the world through the use of its own unbiased information satellite (A/C.3/SR.1727).

184. The representative of Uganda in the Third Committee said consideration should be given to the possibility of creating regional offices designed to meet the needs as they arose, and such organizations as the Organization of African Unity might play a valuable role if they were given responsibility on a regional level for certain aspects of human rights (A/C.3/SR.1727).

185. The representative of the Ukrainian Soviet Socialist Republic in the Social Committee of the Economic and Social Council indicated that the United Nations should confine itself, at that stage, to improving the existing machinery and encouraging Member States to ratify the Covenants as soon as possible (ibid.).

186. The representative of the Union of Soviet Socialist Republics in the Social Committee of the Economic and Social Council said that his delegation was prepared to consider the idea of new machinery for the protection of human rights provided that it was created by a legally binding instrument, based on the joint efforts of Member States and compatible with the United Nations Charter and international law (E/AC.7/SR.574).

187. The representative of the United Arab Republic in the Third Committee indicated that attention should be drawn to the existing regional commissions specifically concerned with human rights. He pointed out that in this regard there had been a proposal to establish an African Commission on Human Rights (A/C.3/SR.1730).

188. The representative of the United Republic of Tanzania in the Social Committee of the Economic and Social Council said that having accepted the idea of machinery for the protection of human rights his delegation contemplated the possibility of elevating the status of the Division of Human Rights to the level of a separate department. A step of that kind might enhance the prestige and effectiveness of the Secretariat's action in the human rights field. He went on further to state that alternative and supplementary machinery to the post of High Commissioner for Human Rights would be for Governments themselves to appoint a person such as an ombudsman or a panel of consultants to be available to individuals within the country who might hear complaints regarding violations of human rights. Local High Commissioners might thus be established and in addition, there might be regional High Commissioners (E/AC.7/SR.572).

189. Several representatives^{8/} expressed regret that the question of "some other appropriate international machinery" had not been considered in greater depth.

^{8/} For instance: India (E/CN.4/SR.940); Iraq (E/CN.4/SR.939); Nigeria (E/AC.7/SR.573); Union of Soviet Socialist Republics (E/AC.7/SR.572).

XII. ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1238 (XLII)

190. Operative paragraph 2 of General Assembly resolution 2595 (XXIV) also requests the Secretary-General to provide the General Assembly with an analytical study relating to Economic and Social Council resolution 1238 (XLII), which reads as follows:

"The Economic and Social Council,

"Having adopted resolution 1237 (XLII) of 6 June 1967 on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery,

"1. Requests the Secretary-General to bring Economic and Social Council resolution 1237 (XLII), and the amendments thereto submitted by the United Republic of Tanzania, together with pertinent documentation representing the various points of view expressed, to the attention of Member States, to invite their views on the question concerning the implementation of human rights through a United Nations High Commissioner for Human Rights or some other appropriate international machinery, and to submit a report embodying the replies of Governments in time for consideration by the General Assembly during its twenty-second session;

"2. Further requests the Secretary-General to invite the Director-General of the International Labour Office and the Director-General of the United Nations Educational, Scientific and Cultural Organization to submit to the General Assembly, for its assistance at its twenty-second session, a report on their experience concerning the implementation of human rights in their spheres of competence."

191. In accordance with Economic and Social Council resolution 1238 (XLII), the Secretary-General submitted to the last three sessions of the General Assembly, in document A/7498, annex III, the replies received from Member States in accordance with paragraph 1 of that resolution, and in annex IV the reports received from ILO and UNESCO in accordance with paragraph 2 of that resolution. These have been included as appropriate in this study.
