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## REPORT OF THE WORKING GROUP ON THE QUESTION OF THE ESTABLISHMENT OF A UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

### Introduction

1. In its resolution 1982/22 of 10 March 1982, the Commission on Human Rights requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to formulate a first study on possible terms of reference for the mandate of a High Commissioner for Human Rights, taking into account the provisions of the Charter of the United Nations and of pertinent international instruments concluded under United Nations auspices, the concept contained in General Assembly resolution 32/130 of 16 December 1977, as well as the practice of the United Nations system for the promotion and protection of human rights, and to submit its proposal to the Commission on Human Rights at its thirty-ninth session.
2. In its decision 3 (XXXIV) of 10 September 1981, the Sub-Commission decided to consider at its thirty-fifth session the positive role of a High Commissioner for Human Rights as a United Nations official should play in the full enjoyment of human rights. In the same decision the Sub-Commission requested the Secretary-General to provide to the Sub-Commission all relevant information on the establishment of the Office of the High Commissioner for Human Rights. The Secretary-General had accordingly submitted to the Sub-Commission a summary of information in document E/CN.4/Sub.2/1982/26.
3. In the course of its thirty-fifth session, the Bureau of the Sub-Commission decided to propose that the present issue be discussed under agenda item 4. The Sub-Commission accepted the proposal and it was agreed that a Working Group consisting of some members of the Bureau should prepare material for this item, with the view to expediting the discussion on the subject.

4. The Working Group composed of Mr. A. Eide (Vice-President), Mr. C.L.C. Mubanga-Chipoya (Vice-President), Mrs. E. Odio Benito (Vice-President) and Mr. I. Tošerski (Rapporteur) decided to request the Secretariat to produce a synopsis of formal proposals and amendments presented to the Commission on Human Rights at its twenty-third session and the General Assembly at its thirty-second session, on the question of a High Commissioner for Human Rights. The synopsis is attached to the present document.

5. The purpose of the synopsis was to provide some background information for the preparation of the first study on possible terms of reference for a High Commissioner for Human Rights and to facilitate the discussion on the positive role that a High Commissioner could play in the full enjoyment of human rights.

6. The synopsis only includes proposals formally presented to the Commission and the General Assembly and amendments thereto. There exists many proposals which are privately circulated but not formally presented and they may contain valuable ideas. However, for practical reasons the scope of the present document had to be limited.

7. The contents of the synopsis includes proposals and amendments relating to the following aspects of the subject: (I) Appointment of the High Commissioner for Human Rights; (II) Relationship of the High Commissioner for Human Rights with other United Nations Organs; (III) Functions which the High Commissioner for Human Rights could perform; (IV) Way in which the High Commissioner for Human Rights could perform his functions.

I. SYNOPSIS OF FORMAL PROPOSALS AND AMENDMENTS PRESENTED TO THE  
TWENTY-THIRD SESSION OF THE COMMISSION ON HUMAN RIGHTS AND  
THE THIRTY-SECOND SESSION OF THE GENERAL ASSEMBLY

I. APPOINTMENT OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. In 1967 during the twenty-third session of the Commission on Human Rights, a proposal relating to the appointment of the High Commissioner for Human Rights was contained in operative paragraph 3 of draft resolution E/CN.4/L.974, submitted to the Commission by Austria, Costa Rica, Dahomey, the Philippines and Senegal. In that proposal the Commission requested the Economic and Social Council to recommend to the General Assembly to "decide that the High Commissioner shall be appointed by the General Assembly, on the recommendation of the Secretary-General, for a term of five years. His emoluments shall not be less favourable than those of an Under-Secretary ..."

2. In relation to this aspect of the question, it may be noted that in 1977, in draft resolution A/C.3/32/L.25/Rev.1, sponsored by Bolivia, Colombia, Costa Rica, Denmark, El Salvador, Gambia, Honduras, Ireland, Italy, Lesotho, the Netherlands, Norway, Panama, Senegal, Spain, Suriname and Venezuela, subsequently joined by Australia, Canada, Finland, Iceland, New Zealand, Sweden and the United Kingdom of Great Britain and Northern Ireland, which was introduced to the Third Committee during the thirty-second session of the General Assembly, it was proposed in operative paragraph 1 of that resolution that the Assembly:

"1. Decides to establish, under the authority of the Secretary-General, a United Nations High Commissioner for Human Rights, who will possess the degree of personal independence, prestige and integrity required for the discreet and impartial performance of his functions;"

3. In operative paragraph 6 of the same resolution it was recommended that the General Assembly:

"6. Decides that:

(a) The High Commissioner shall be appointed by the Secretary-General and confirmed by the General Assembly for a term of five years and that his emoluments shall not be less favourable than those of an Under-Secretary;"

4. In amendments (A/C.3/32/L.35) to draft resolution submitted by the German Democratic Republic and Madagascar, it was proposed to replace operative paragraph 6 of the draft resolution by the following:

"6. Requests the Secretary-General to undertake consultations with regional groups in order to ascertain the feasibility of a consensus on the establishment of a High Commissioner for Human Rights or any other mechanism to enhance human rights activities within the United Nations system and to report to the Commission on Human Rights at its thirty-fourth session;"

5. In a revised text (A/C.3/32/L.35/Rev.1) submitted by the same sponsors, it was suggested to replace operative paragraph 6 by the following:

"6. Requests the Secretary-General to undertake consultations with regional groups in order to ascertain the feasibility of a general agreement on the establishment of a High Commissioner for Human Rights or any other mechanism to enhance human rights activities within the United Nations system and to report to the Commission on Human Rights at its thirty-fourth session;"

6. In amendments (A/C.3/32/L.35) to draft resolution A/C.3/32/L.23/Rev.1 submitted by the German Democratic Republic and Madagascar, it was proposed to replace operative paragraph 1 by the following:

"1. Decides to defer the consideration of the establishment of a High Commissioner for Human Rights until the feasibility of a general agreement between Member States is ascertained;"

7. In amendments (A/C.3/32/L.36) to draft resolution A/C.3/32/L.25/Rev.1 submitted by Angola, Benin, Bulgaria, Burundi, Mongolia and the Ukrainian Soviet Socialist Republic, it was proposed to replace operative paragraph 1 by the following:

"1. Determines that the Commission on Human Rights possesses the prestige and integrity required for performance of its functions;"

8. With respect to operative paragraph 6, the authors of the amendments (A/C.3/32/L.36) proposed additional revised amendments contained in document A/C.3/32/L.36/Rev.1, in which they proposed the addition of a new operative paragraph reading as follows:

"6. Requests the Secretary-General to continue and strengthen advisory services in accordance with General Assembly resolution 926 (X)."

9. In the course of the consideration of draft resolution A/C.3/32/L.25/Rev.1, an oral amendment relating to operative paragraph 1 of the draft resolution was proposed by the representative of Saudi Arabia. The amendment consisted in adding after the word "functions" in operative paragraph 1, of the following:

"taking into account that, notwithstanding all these high qualities, he will do his utmost to be impervious to any campaign that may be waged by a State or its mass media aimed at besmirching the reputation of another State Member of the United Nations;"

10. The amendment was accepted by the sponsors of draft resolution A/C.3/32/L.25/Rev.1.

II. RELATIONSHIP OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
WITH OTHER UNITED NATIONS ORGANS

11. As regards the relationship of the High Commissioner with the Secretary-General and other United Nations organs, it was proposed in paragraph 2 (b) of draft resolution E/CN.4/L.974 that the General Assembly instruct that the High Commissioner "... 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; ..."

12. In paragraph 5 of the same draft resolution it was suggested that the General Assembly "... invite 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; ..."

13. In operative paragraph 2 (c) of draft resolution A/C.3/32/L.25/Rev.1 it was recommended that the High Commissioner "(c) Maintain close relations with the Secretary-General and all other organs of the United Nations, specialized agencies and other intergovernmental organizations concerned with human rights, and give advice and assistance in order to ensure co-ordination of their activities in the human rights field". Further, in operative paragraph 5 of the same resolution, it was recommended that the General Assembly "5. Requests the High Commissioner to keep in close contact with the Secretary-General in order to be informed of the work of all organs of the United Nations and specialized agencies concerned with human rights".

14. Regarding operative paragraph 2 (c) of draft resolution A/C.3/32/L.25/Rev.1, authors of amendments A/C.3/32/L.36 proposed the deletion, in operative paragraph 2 (c), of the words "the Secretary-General and" and of the phrase "and give advice and assistance in order to ensure co-ordination of their activities in the human rights field".

### III. TASKS THE HIGH COMMISSIONER FOR HUMAN RIGHTS COULD PERFORM

15. With respect to the tasks which the High Commissioner for Human Rights could perform it was proposed, in the recommendation of the Commission on Human Rights in draft resolution E/CN.4/L.974, that the General Assembly:

"2. Instruct the High Commissioner to assist in promoting and encouraging the 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 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; in particular: ...

- '(b) He may render assistance and services to any State Member of the United Nations or member of any of its specialized agencies, of the International Atomic Energy Agency, or 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 resolution 728 F (XXVIII) of the Economic and Social Council and may, whenever he deems it appropriate, bring them to the attention of the Government of any of the States mentioned in paragraph 2 (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 on his evaluation of the 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. Before submitting his reports, the High Commissioner shall consult when appropriate any Government or specialized agency concerned taking due account of these consultations in the preparation of his reports."

16. In connection with the tasks to be performed by the High Commissioner, an amendment (E/CN.4/L.981) was submitted by the representative of the Ukrainian SSR to draft resolution E/CN.4/L.974 at the Commission's twenty-third session. The amendment consisted in replacing the operative part of the draft resolution relating to the tasks of the High Commissioner by the following text:

"1. Decides that the primary task of the Commission at the present stage is the further study of the possibilities of improving the functioning of the already existing organs of the United Nations in the field of the promotion and protection of human rights;

2. Decides that the most important task in this field is the implementation of human rights through the signature and ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenants on Human Rights and other conventions relating to human rights;"

17. These amendments were later withdrawn by the representative of the Ukrainian SSR after the sponsors of the draft resolution had accepted an amendment related to another part of the draft resolution. 1/

18. At the Commission's 940th meeting, the representatives of Italy orally proposed the insertion, in the introductory part of paragraph 2 of the draft resolution, after the words "their auspices for this purpose", of the words "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". 2/

19. This oral proposal by Italy was accepted by the sponsors of the draft resolution.

20. The representative of the USSR submitted amendments (E/CN.4/L.981) to the draft resolution which consisted in deleting operative paragraphs 1 to 7 of the draft resolution and in replacing them with the following text:

"1. Decides to consider at its twenty-third session the question of measures for realization of rights and freedoms set forth in the international covenants on human rights.

2. Requests the Economic and Social Council and the Commission on Human Rights to study this question with the assistance of the Secretary-General and to submit to the twenty-third session of the General Assembly necessary and effective recommendations."

21. In relation to the tasks which the High Commissioner could perform, it was recommended, in operative paragraph 2 (a)(i), (ii), (iii) of draft resolution A/C.3/32/25/Rev.1, that the General Assembly:

"2. Decides that the High Commissioner shall act within the framework of the Charter of the United Nations in order to:

"(a) Promote and strengthen universal and effective understanding and respect for human rights and fundamental freedom for all without distinction as to race, religion, sex or language, as set forth in the Charter of the United Nations, the Universal Declaration of Human Rights and other instruments of the United Nations and in particular:

"(i) Consider as areas of special concern and attention such massive violations of human rights as apartheid, racism and racial discrimination, colonial domination, foreign occupation and alien subjugation;

"(ii) Give special attention to the critical importance of ensuring the effective enjoyment by all of their civil and political rights and their economic, social and cultural rights and such other rights as are recognized by the Charter of the United Nations and by the General Assembly, bearing in mind that all human rights and fundamental freedoms are indivisible and interdependent;

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1/ This amendment consisted in inserting the following new paragraph:

"Considering that the General Assembly, in its resolution 2200 (XXI) of 16 December 1966, adopted and opened for signature and ratification the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights,".

2/ See E/CN.4/L.940, para. 487.

"(iii) Actively promote the understanding of the basic human rights inherent in the establishment of a new international economic order and of the necessity to link the traditional concept of human rights with the rights of all to have their economic, social and cultural needs met;

"(b) Render, at the specific request of any State, assistance and services, including good offices, to that State; the High Commissioner may submit a report on such assistance and services and on its results with the consent of the State concerned;"

22. In the amendments (A/C.3/32/L.35) submitted by the German Democratic Republic and Madagascar, it was suggested to replace operative paragraph 2 of draft resolution A/C.3/32/L.25/Rev.1 by the following:

"2. Decides that the High Commissioner, if established, shall act within the framework of the Charter of the United Nations, and according to a mandate agreed upon by consensus in the General Assembly in order to:";

23. In a revised text of the amendments (A/C.3/32/L.35/Rev.1) submitted by the same sponsors, it was proposed to delete operative paragraph 2.

24. Regarding operative paragraph 2 of the draft resolution, the authors of the amendments contained in document A/C.3/32/L.36 proposed the replacement of the beginning of operative paragraph 2 by the following:

"2. Requests the Commission to act within the framework of the Charter of the United Nations in order to:";

25. Regarding operative paragraph 2 (b) of draft resolution A/C.3/32/L.25/Rev.1, the authors of the amendments contained in document A/C.3/32/L.36 proposed the replacement of the first phrase of operative paragraph 2 (b) by the following:

"(b) Requests the Secretary-General to continue and strengthen advisory services in accordance with General Assembly resolution 926 (X);"

and the deletion, also in operative paragraph 2 (b), of the phrase after the semicolon.

26. As regards operative paragraph 3, the authors of the same amendments proposed the replacement, in operative paragraph 3, of the words "High Commissioner" by the word "Commission" and of the word "his" by the word "its";

27. With respect to operative paragraph 2 (b) the authors of the text contained in document A/C.3/32/L.36 proposed additional revised amendments in document A/C.3/32/L.36 which consisted in proposing to delete operative paragraph 2 (b).



IV. WAY IN WHICH THE HIGH COMMISSIONER FOR HUMAN RIGHTS COULD PERFORM HIS FUNCTIONS

28. In connection with the functions which the High Commissioner could perform it was recommended in paragraph 4 of draft resolution E/CN.4/L.974 that the General Assembly:

"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."

29. In paragraph 6 of that resolution it was recommended that the General Assembly:

"6. Requests the Secretary-General to supply the High Commissioner with all the facilities and information required for carrying out his functions." In paragraph 7 of the same resolution it was proposed that: ...

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

30. In the draft resolutions before the Commission it was proposed to insert the following:

"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 on his evaluation of the 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. Before submitting his reports, the High Commissioner shall consult when appropriate any Government or specialized agency concerned taking due account of these consultations in the preparation of his reports."

31. With respect to the way in which the High Commissioner for Human Rights would perform his function, it was formulated, in operative paragraph 2 (d) of draft resolution A/C.3/32/L.25/Rev.1, that the High Commissioner "report annually to the General Assembly on his activities and on developments in the field of human rights". Further, in operative paragraph 3 it was recommended that the General Assembly

"3. Stresses that the High Commissioner will have to exercise his functions in full compliance with the provisions of the Charter of the United Nations, and that the authority given to the High Commissioner by this resolution shall not prejudice or authorize interference in the functions and powers of organs already in existence or which may be established for the promotion or protection of human rights and fundamental freedoms, in particular those bodies within the United Nations system entrusted with a specific mandate and competence in the areas listed in paragraph 2, subparagraphs (a) (i) of the present resolution;"

32. In operative paragraph 4 of the same draft resolution the Assembly would

"4. Emphasizes that, in the accomplishment of his task, the High Commissioner will have to give the most careful consideration to the economic and social situation and the cultural and religious values of the different countries;"

33. In operative paragraph 5 the Assembly would

"5. Requests the High Commissioner to keep in close contact with the Secretary-General in order to be informed of the work of all organs of the United Nations and specialized agencies concerned with human rights, including the struggle against colonialism, apartheid, racism and racial discrimination, colonial domination, foreign occupation and alien subjugation, and for the supply of facilities and information required for carrying out his functions;"

34. It was also recommended, in operative paragraph 7, that the Assembly

"7. Requests the Secretary-General to submit at its thirty-third session concrete proposals on the organization of the UNHC's office, taking into account the need to make full use of the existing resources;"

35. In the amendments submitted by the German Democratic Republic and Madagascar (A/C.3/32/L.25/Rev.1) it was proposed to delete operative paragraph 7 1/. The same proposal was formulated in the revised text of the sponsors (A/C.3/32/L.35/Rev.1). The authors of the amendments A/C.3/32/L.36 also suggested deletion of paragraph 7.

36. In this connection the authors of the amendments contained in document A/C.3/32/L.36 suggested the replacement, in operative paragraph 2 (d), of the words "General Assembly" by the words "Economic and Social Council" and of the word "his" by the word "its";

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1/ See A/32/423, para. 14.

37. As regards operative paragraph 3, the authors of the same amendments (A/C.3/32/L.36) proposed the replacement, in operative paragraph 3, of the words "High Commissioner" by the word "Commission" and of the word "his" by the word "its".

38. With respect to operative paragraph 5, the authors of the amendments A/C.3/32/L.36, proposed the replacement of the beginning of operative paragraph 5 by the word "work" by the following:

"5. Requests the Secretary-General to keep the Commission informed of the work".

They also suggested deletion, in operative paragraph 5, of the words "and for the supply of the facilities and information required for carrying out his functions".

39. As concerns operative paragraph 4, the authors of the amendment A/C.3/32/L.36 proposed the replacement of the words "his" and "High Commissioner" by the words "its" and "Commission";

40. Regarding operative paragraph 4, the authors of the additional revised amendments (A/C.3/32/L.36/Rev.1) proposed the addition, in operative paragraph 4, after the word "countries" in the last line of the paragraph, of the following:

"taking into account that, in the discharge of his duties, he will refrain from resorting to any action which may jeopardize the development of friendly relations among nations and he should scrupulously observe paragraph 7 of Article 2 of the Charter of the United Nations which states:

'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter'".