

THE RIGHT TO SELF-DETERMINATION

***HISTORICAL AND CURRENT DEVELOPMENT
ON THE BASIS OF UNITED NATIONS INSTRUMENTS***

Study prepared by Aureliu Cristescu

***Special Rapporteur of the Sub-Commission
on Prevention of Discrimination
and Protection of Minorities***



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UNITED NATIONS

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NOTE

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The opinions expressed in the present study are those of the Special Rapporteur.

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ABBREVIATIONS

FAO	Food and Agriculture Organization of the United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
WFP	World Food Programme

INTRODUCTION

1. In its resolutions 9 (XXIV) of 18 August 1971 and 9 (XXV) of 31 August 1972, the Sub-Commission recommended that the Commission on Human Rights should request the Sub-Commission on Prevention of Discrimination and Protection of Minorities to place on its agenda the item "The historical and current development of the right of peoples to self-determination on the basis of the Charter of the United Nations and other instruments adopted by the United Nations organs".

2. In resolution 10 (XXIX) of 22 March 1973, the Commission requested the Sub-Commission to place on its agenda the item

The historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms.

The Commission invited the Sub-Commission to give high priority to this item at its twenty-sixth session, to examine it with a view to establishing the guidelines for a study on this matter, including the possibility of appointing a special rapporteur for the purpose, and to report on the results of its consideration to the Commission at its thirtieth session.

3. In resolution 5 (XXVI), adopted on 19 September 1973, the Sub-Commission requested the Commission on Human Rights to authorize the Sub-Commission to designate a special rapporteur at its twenty-seventh session, to prepare a detailed study on the subject. This initiative of the Sub-Commission was welcomed by the General Assembly in its resolution 3070 (XXVIII) of 30 November 1973.

4. On the recommendation of the Commission on Human Rights (Commission resolution 4 (XXX) of 20 February 1974), the Economic and Social Council authorized the Sub-Commission to designate at its twenty-seventh session a special rapporteur from among its members, to carry out the study (Council resolution 1865 (LVI) of 17 May 1974).

5. At its twenty-seventh session the Sub-Commission, by its resolution 3 (XXVII) adopted at the 706th meeting on 16 August 1974, appointed Mr. Aureliu Cristescu as Special Rapporteur for the study.

6. The Commission, by its resolution 3 (XXXI) of 11 February 1975, invited the Sub-Commission to ask the Special Rapporteur to submit his final report to the Sub-Commission at its thirtieth session, so that it could be placed before the Commission at its thirty-fourth session.

7. At its twenty-eighth session, the Sub-Commission considered the preliminary report submitted by the Special Rapporteur (E/CN.4/Sub.2/L.625). In decision 5, relating to its programme of work, the Sub-Commission decided that the Special Rapporteur should submit a draft report on the study at the twenty-ninth session of the Sub-Commission and his final report at the thirtieth session, in 1977.¹

8. In resolution 3382 (XXX) of 10 November 1975, the General Assembly stated that it was keenly awaiting the conclusion of the study.

9. At its twenty-ninth session, the Sub-Commission had before it the draft report (E/CN.4/Sub.2/L.641) submitted by the Special Rapporteur.

10. The General Assembly at its thirty-first session, in resolution 31/34 of 30 November 1976, reiterated that it was keenly awaiting the conclusion of the study by the Sub-Commission of the historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms.

11. By its resolution 2 (XXX) of 26 August 1977, the Sub-Commission, after having heard the statement of the Special Rapporteur and noted the important progress made so far in the drafting of the study, despite the vast documentation involved and the difficulty of preparing such a study of synthesis on a multi-disciplinary basis, and having noted also that owing to lack of time and technical facilities, the study could not be finalized for submission to the Sub-Commission at its thirtieth session, decided to examine the final report at its thirty-first session.

12. At its thirty-second session the General Assembly, in its resolution 32/14 of 7 November 1977, stated that it was looking forward to the publication of the study on the historical and current development of the right to self-determination on the basis of the Charter of the United Nations and other instruments adopted by United Nations organs, with particular reference to the promotion and protection of human rights and fundamental freedoms.

13. At its thirty-first session, the Sub-Commission had before it the final report on this subject, submitted by the Special Rapporteur (E/CN.4/Sub.2/404 (vol. I, II, III) and Add.1). By resolution 3 (XXXI) of 13 September 1978, the Sub-Commission expressed its thanks to the Special Rapporteur for his report; decided to transmit the report to the Commission on Human Rights for consideration at its thirty-fifth session; recommended that the report should be submitted to the General Assembly at the earliest possible date; decided to recommend to the Commission on Human Rights and to the Economic and Social Council that the report should be printed and given the widest possible distribution. By resolution 33/24 of 29 November 1978, the General Assembly took note of the study and expressed its thanks to the author. By decision 3 (XXXV), the Commission on Human Rights, having received the report, decided to recommend to the Economic and Social Council that the report be printed and given the widest possible distribution, including distribution in Arabic. Decision 3 (XXXV) of the Commission on Human Rights was endorsed by the Economic and Social Council in its decision 1979/39 of 10 May 1979.

¹ See E/CN.4/1180, annex II, item X.

Chapter I

THE RIGHT TO SELF-DETERMINATION IN THE UNITED NATIONS CHARTER

14. The Charter of the United Nations expressly establishes the right to self-determination in Article 1, paragraph 2 (Chapter I: "Purposes and Principles") and in Article 55 (Chapter IX: "International Economic and Social Co-operation").

15. Article 1, paragraph 2, states that one of the purposes of the United Nations is the following:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

16. It should be noted that the words "based on respect for the principle of equal rights and self-determination of peoples" did not appear in the Dumbarton Oaks Proposals. Their addition was proposed at the San Francisco Conference in the amendments submitted by the four sponsoring Governments.²

17. At the 6th meeting of Committee I of Commission I of the San Francisco Conference, held on 15 May 1945, the following remarks were made concerning the mention of the right to self-determination in Chapter I of the Charter:

[...] on the one side that this principle corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the Charter; on the other side [...] that the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession.³

The Committee had before it an amendment proposing the replacement of the words "based on respect for the principle of equal rights and self-determination of peoples" by the words "to strengthen international order on the basis of respect for the essential rights and equality of the states, and of the peoples' right of self-determination". The grounds for the amendment were as follows:

1. The amendment of the sponsoring governments mentions the equality of the rights of *peoples*, including that of self-determination. There seems to be some confusion in this: one speaks generally of the equality of *states*; surely one could use the word "peoples" as an equivalent for the word "states", but in the expression "the peoples' right of self-determination" the word "peoples" means the national groups which do not identify themselves with the population of a state.

As for the word "nations" used at the beginning of this article, it is not possible to determine whether it is used in the first or in the second meaning of the word "peoples".

2. The second criticism on the text proposed by the amendment of the sponsoring governments is that it would be dangerous to put forth the peoples' right of self-determination as a basis for the friendly relations *between the nations*. This would open the door to inadmissible interventions if, as seems probable, one wishes to take inspiration from the peoples' right of self-determination in the action of the Organization and not in the relations between the peoples.⁴

18. The amendment was rejected by more than a two-thirds majority, mainly for the following reasons:

(1) It was held that the idea of international order, in this connection, is altogether new, not being submitted by any amendment of any delegation. International order was suggested in other respects.

(2) And that paragraph 2 has for a purpose to strengthen universal peace and friendly relations on the basis of equality of right as stated.

(3) The equality of states was dealt with and accepted under Chapter II, Principles, so it was irrelevant here to the point at issue.

(4) That what is intended by paragraph 2 is to proclaim the equal rights of peoples as such, consequently their right to self-determination. Equality of rights, therefore, extends in the Charter to states, nations and peoples.⁵

19. The debates of the Sub-Committee of Committee I of Commission I included an exchange of views on the meaning of the principle of equal rights and self-determination of peoples. This discussion was summarized as follows in the report of the Rapporteur of this Sub-Committee (I/1/A) to Committee I/1 (1 June 1945):

It was understood: That the principles of equal rights of people and that of self-determination are two component elements or one norm.

That the respect of that norm is a basis for the development of friendly relations, and is in effect, one of the appropriate measures to strengthen universal peace.

It was understood likewise that the principle in question, as a provision of the Charter, should be considered in function of other provisions.

That an essential element of the principle in question, is a free and genuine expression of the will of the peoples; and thus to avoid cases like those alleged by Germany and Italy. That the principle as one whole extends as a general basic conception to a possible amalgamation of nationalities if they so freely choose.⁶

20. The report of the Rapporteur of Committee I to Commission I (13 June 1945) contains the following passage:

The Committee understands that the principle of equal rights of peoples and that of self-determination are two complementary parts of one standard of conduct;

that the respect of that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace;

that an essential element of the principle in question is a free and genuine expression of the will of the people, which avoids cases of the alleged expression of the popular will, such as those used for their own ends by Germany and Italy in later years.⁷

21. The view was expressed in the Co-ordination Committee of the Conference that the simultaneous use of the words "nations" and "peoples" seemed to introduce the right to secession and that it would have been more appro-

² *Documents of the United Nations Conference on International Organization*, G/29 (vol. III, p. 622).

³ *Ibid.*, I/1/16 (vol. VI, p. 296).

⁴ *Ibid.*, I/1/17 (*ibid.*, p. 300).

⁵ *Ibid.*, I/1/A/19 (*ibid.*, p. 704).

⁶ *Ibid.*, (*ibid.*, pp. 703-704).

⁷ *Ibid.*, I/1/34(1) (*ibid.*, p. 455).

priate to use only the word “peoples”. It was also held, as an argument against the use of the word “nations”, that international relations were established between States, not between nations. On the other hand, it was maintained that the word “nations” would be preferable, since it would cover certain Members of the United Nations which had not yet attained statehood.⁸

22. The introductory paragraph of Article 55 of the Charter reads as follows:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote [...].

The reference to respect for the principle of equal rights and self-determination of peoples, which did not appear in the corresponding text of the Dumbarton Oaks Proposals, was introduced by the adoption of an amendment submitted by the sponsoring Governments.⁹

23. The principle of the right to self-determination is established indirectly in Article 76 of the Charter (Chapter XII: “International Trusteeship System”), paragraph b. of which provides that one of the objectives of the trusteeship system is to promote the progressive development of the

inhabitants of the Trust Territories towards “self-government or independence”, taking into account, *inter alia*, “the freely expressed wishes of the peoples concerned”. The same principle appears in Article 73 (Chapter XI: “Declaration regarding Non-Self-Governing Territories”, where it is affirmed that:

Members of the United Nations which assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize [...] the principle that the interests of the inhabitants of these territories are paramount and accept as a sacred trust the obligation [...] to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions.

24. In this connexion, mention may be made of the opinion expressed in the documents of the San Francisco Conference that:

There is implicitly affirmed—in providing rules of general application for the transition from a colony to a mandate and from a mandate to a sovereign State—the principle that the goal which should be sought is that of obtaining the universal application of the principle of self-determination.¹⁰

25. Many resolutions and other instruments adopted by the General Assembly (to be examined in the following chapter) have made the point that, under the Charter, the right to self-determination applies both to Trust Territories and to Non-Self-Governing Territories.

⁸ *Ibid.*, CO/170 (vol. XVII, p. 142).

⁹ *Ibid.*, G/29 (vol. III, p. 626).

¹⁰ *Ibid.*, G/7(c) (vol. III, p. 146).

Chapter II

THE RIGHT TO SELF-DETERMINATION AS DEVELOPED IN MAJOR UNITED NATIONS INSTRUMENTS

26. In this chapter, the Special Rapporteur will consider the principal general resolutions concerning the right to self-determination. The purpose of reviewing these resolutions is to demonstrate the contribution they have made, and any contribution made by the studies and debates which preceded them, to the definition of the right to self-determination as a fundamental human right; to the application of this right to Trust Territories and Non-Self-Governing Territories in general; to international respect for the right; and to the analysis of its different aspects, especially that of the question of permanent sovereignty over natural resources.

A. Instruments prior to the International Covenants on Human Rights

27. Viewed from the standpoint of the present study, the work of United Nations bodies during the Organization's early years shows that the desire existed to gain recognition of the right to self-determination as a fundamental human right and of its applicability to Trust Territories and Non-Self-Governing Territories in general.

28. At its sixth session, in 1950, the Commission on Human Rights had before it a proposal to include in the draft international covenant on human rights¹¹ a text providing *inter alia* that:

Every people and every nation shall have the right to national self-determination. States which have responsibilities for the administration of Non-Self-Governing Territories shall promote the fulfilment of this right, guided by the aims and principles of the United Nations in relation to the peoples of such territories.¹²

29. At the fifth session of the General Assembly, in 1950, the Third Committee had before it a draft resolution (A/C.3/L.76) on the draft international covenant on human rights and measures of implementation, and on the future work of the Commission on Human Rights. Among the amendments submitted to this draft resolution was a proposal (A/C.3/L.96) for the inclusion in the draft covenant of the text quoted in paragraph 28 above. Another amendment (A/C.3/L.88), adopted by 31 votes to 16, with 5 abstentions,¹³ forms section D of resolution 421 (V), adopted by the General Assembly on 4 December 1950, entitled "Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights". The section in question reads as follows:

Calls upon the Economic and Social Council to request the Commission on Human Rights to study ways and means which

would ensure the right of peoples and nations to self-determination, and to prepare recommendations for consideration by the General Assembly at its sixth session.

During the debate in the Third Committee, the sponsors of the text adopted by the General Assembly as resolution 421 D (V) explained that the purpose of the text was to request the Commission on Human Rights to decide quite objectively whether or not the right of nations to self-determination was indeed a basic human right; if it was, an article dealing with that right should be included in the covenant, to the real benefit of all nations, especially those which had not yet gained independence.¹⁴

30. The view was expressed that an article on the right to self-determination should be included in the covenant because: (a) that right was the source of or an essential prerequisite for other human rights, since there could be no genuine exercise of individual rights without the realization of the right to self-determination; (b) in the drafting of the covenant, the principles and purposes of the Charter, which included the principle of equal rights and self-determination of peoples, should be applied and protected; (c) many provisions of the Universal Declaration of Human Rights had a direct bearing on the right to self-determination; and (d) unless the covenant embodied that right, it would be incomplete and inoperative.¹⁵

31. It was also said that the right to self-determination was the right of a group of individuals in association; it was certainly the prerogative of a community, but the community itself consisted of individuals and any encroachment on its collective right would be tantamount to a breach of their fundamental freedoms.¹⁶

32. At the sixth session of the General Assembly, the Third Committee continued to consider whether an article on the right to self-determination should be included in the international covenant on human rights. During the debate on this point, many delegations proposed that the General Assembly should agree to include an article on the right to self-determination in the draft international covenant on human rights. Further arguments were advanced in favour of its inclusion in the covenant and views were expressed on certain aspects of the right.¹⁷ It was maintained that the right to self-determination stood above all other rights and formed the corner-stone of the whole edifice of human rights. It was impossible for an enslaved people to enjoy to the full the economic, social and cultural rights which the Commission on Human Rights would wish to embody in

¹¹ At that stage of the Commission's work, it had not been decided to draw up two different covenants.

¹² *Official Records of the Economic and Social Council, Eleventh Session, Supplement No. 5* (E/1681, annex III).

¹³ *Official Records of the General Assembly, Fifth Session, Third Committee*, 311th meeting, para. 68.

¹⁴ *Ibid.*, 309th meeting, paras. 52-53.

¹⁵ *Ibid.*, 309th meeting, para. 60; 310th meeting, paras. 6, 16, 19 and 35, and 311th meeting, para. 4.

¹⁶ *Ibid.*, 310th meeting, para. 35, and 311th meeting, para. 37.

¹⁷ *Official Records of the General Assembly, Sixth Session, Third Committee*, 358th, 364th, 367th, 371st, 396th-399th meetings.

the covenant. The covenant would be devoid of all meaning if it did not include the right to self-determination.¹⁸ The opinion was expressed that the right to self-determination should not be confused with the rights of minorities, since the authors of the Charter had not intended to give that right to minorities.¹⁹ The right to self-determination should not be exercised to destroy the unity of a nation or to impede the creation of that unity, in violation of national sovereignty.²⁰ With regard to the nature of the right, it was held to be a true right possessing political, economic and legal elements.²¹ The right of peoples to self-determination had two aspects: from the domestic point of view it signified the people's right to self-government and from the external point of view their independence.²² It was pointed out that the application of the principle of self-determination was a condition of international peace and security and of fruitful international co-operation.²³

33. Resolution 545 (VI), adopted by the General Assembly on 5 February 1952, entitled "Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination", reads as follows:

Whereas the General Assembly at its fifth session recognized the right of peoples and nations to self-determination as a fundamental human right (resolution 421 D (V) of 4 December 1950),

Whereas the Economic and Social Council and the Commission on Human Rights, owing to lack of time, were unable to carry out the request of the General Assembly to study ways and means which would ensure the above-mentioned right to peoples and nations,

Whereas the violation of this right has resulted in bloodshed and war in the past and is considered a continuous threat to peace,

The General Assembly

- (i) To save the present and succeeding generations from the scourge of war,
- (ii) To reaffirm faith in fundamental human rights, and
- (iii) To take due account of the political aspirations of all peoples and thus to further international peace and security, and to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,

1. *Decides* to include in the International Covenant or Covenants on Human Rights an article on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations. This article shall be drafted in the following terms: 'All peoples shall have the right to self-determination', and shall stipulate that all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right, in conformity with the Purposes and Principles of the United Nations, and that States having responsibility for the administration of Non-Self-Governing Territories should promote the realization of that right in relation to the peoples of such Territories;

2. *Requests* the Commission on Human Rights to prepare recommendations concerning international respect for the self-determination of peoples and to submit these recommendations to the General Assembly at its seventh session.

34. At its seventh session, the General Assembly adopted resolution 637 (VII), of 16 December 1952, entitled "The right of peoples and nations to self-determination". Among the ideas expressed in that resolution, the following are relevant to the present study: (a) that the right of peoples

and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights; (b) that every State Member of the United Nations, in conformity with the Charter, should respect the maintenance of that right in other States; (c) that the States Members of the United Nations should uphold the principle of self-determination of all peoples and nations; (d) that the peoples of Non-Self-Governing and Trust Territories have the right to self-determination and that Member States should therefore recognize and promote the realization of that right and facilitate its exercise; (e) that the Member States responsible for the administration of Non-Self-Governing and Trust Territories should take certain practical steps pending, and in preparation for, the realization of the right to self-determination. Moreover, the resolution recommends Member States responsible for the administration of Non-Self-Governing Territories voluntarily to include in the information transmitted by them under Article 73 e. of the Charter details regarding the extent to which the right of peoples and nations to self-determination is exercised by the peoples of those Territories, and in particular regarding their political progress and the measures taken to develop their capacity for self-administration, to satisfy their political aspirations and to promote the progressive development of their free political institutions.

35. Several General Assembly resolutions (567 (VI) of 18 January 1952, 648 (VII) of 10 December 1952 and 742 (VIII) of 27 November 1953) deal with the factors which should be taken into account in deciding whether or not a Territory is one whose people have not yet attained a full measure of self-government, for the purpose of determining whether the administering authority should continue or cease to transmit the information provided for in Chapter XI of the Charter. The General Assembly set up an *Ad Hoc* Committee to study the factors concerned. In resolution 648 (VII), the *Ad Hoc* Committee appointed thereby was invited to take into account, *inter alia*, in its study of those factors, the features guaranteeing the principle of the self-determination of peoples in relation to Chapter XI of the Charter. Subsequently, in resolution 742 (VIII), it was reasserted that each concrete case should be considered and decided upon in the light of its particular circumstances and taking into account the right of self-determination of peoples.

36. At its ninth session, the General Assembly, in considering the question of recommendations concerning international respect for the right of peoples and nations to self-determination (resolution 837 (IX) of 14 December 1954), referred to their permanent sovereignty over their natural wealth and resources, in the light of the rights and duties of States under international law, and to the importance of encouraging international co-operation in the economic development of under-developed countries.²⁴

37. At its tenth session, in 1954, the Commission on Human Rights adopted two draft resolutions on recommendations concerning international respect for the right of peoples and nations to self-determination; these drafts were transmitted by the Economic and Social Council, pursuant to its resolution 586 D (XX) of 29 July 1955, to the General

¹⁸ *Ibid.*, 366th meeting, para. 26, 397th meeting, para. 4, and 399th meeting, para. 50.

¹⁹ *Ibid.*, 366th meeting, para. 29.

²⁰ *Ibid.*, 399th meeting, para. 6.

²¹ *Ibid.*, para. 51.

²² *Ibid.*, 397th meeting, para. 5.

²³ *Ibid.*, 397th meeting, para. 8 and 399th meeting, para. 22.

²⁴ In resolution 626 (VII) of 21 December 1952, entitled "Right to exploit freely natural wealth and resources", the General Assembly had pointed out, *inter alia*, that this right was inherent in the sovereignty of peoples and was in accordance with the Purposes and Principles of the Charter of the United Nations.

Assembly for consideration. In the draft resolutions, the Commission proposed that the General Assembly should decide to establish a commission to conduct a full survey of the status of the right to permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, as well as an *Ad Hoc* Commission on Self-Determination. The terms of reference of the latter commission were to include the examination of the following questions: (a) the concept of peoples and nations; (b) the essential attributes and applicability of the principle of equal rights and of self-determination, including the rights and duties of States under international law; (c) the relationship between the principle of self-determination and other Charter principles; (d) the economic, social and cultural conditions under which the application of the principle would be facilitated.

38. At its twelfth session, the General Assembly, on 11 December 1957, adopted resolution 1188 (XII), entitled "Recommendations concerning international respect for the right of peoples and nations to self-determination". In that resolution the General Assembly considered, in the fourth paragraph of the preamble that disregard for the right to self-determination not only undermined the basis of friendly relations among nations as defined in the Charter of the United Nations but also created conditions which might prevent further realization of the right itself; and in the fifth paragraph it expressed the belief that such a situation was contrary to the purposes and principles of the Charter of the United Nations. It reaffirmed that it was of international importance that, in accordance with those purposes and principles: (a) Member States should, in their relations with one another, give due respect to the right of self-determination; (b) Member States having responsibility for the administration of Non-Self-Governing Territories should promote the realization and facilitate the exercise of that right by the peoples of such Territories.

39. At its fifteenth session the General Assembly, on 14 December 1960, adopted resolution 1514 (XV), entitled "Declaration on the granting of independence to colonial countries and peoples". This declaration, which is a document of historic importance, represents one of the most significant contributions the United Nations has made to developing the concept of the right of self-determination, to condemning colonialism and all forms of subjection of peoples to alien domination and exploitation as a denial of that right and of fundamental human rights and to action to promote decolonization. The Declaration reads as follows:

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

40. The debates which took place at plenary meetings of the General Assembly before the adoption of the 43-State draft resolution, and in which 72 representatives participated,²⁵ were mainly devoted to a condemnation of colonialism in all its forms and manifestations and to the need to bring it to a speedy end. Several comments were made on Chapter XI of the Charter (especially Article 73) to the

²⁵ *Official Records of the General Assembly, Fifteenth Session, Plenary Meetings*, 925th, 939th, 944th and 947th meetings. The draft resolution was adopted by 89 votes to none, with 9 abstentions (*ibid.*, 947th meeting, para. 34).

effect that it provided for the obligation of the colonial Powers to assist the colonies to attain their elementary right to freedom and that it embodied the right of peoples to self-determination.²⁶ Mention was made of the relationship between the right of peoples to self-determination and individual freedoms. It was said that the right of all men to freedom in all its forms, particularly the right to combine or associate in collective entities and nations, demonstrated the close link between individual freedom and effective national sovereignty.²⁷ It was affirmed that colonialism was absolutely incompatible with the purposes and principles of the Charter, with friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and with a sound legal and philosophical concept of human rights.²⁸

41. The Declaration and the principles proclaimed in it were interpreted as calling for the immediate abolition of the domination of any people by an alien people in any form or manifestation; it was held that the abolition of domination by the granting of independence should be complete, and should prevent for ever any attempt to revive any alien influence on peoples which had achieved independence; that independence should not mean only political independence, but also economic and cultural independence, free from any direct or indirect influence or exercise of pressure of any kind on peoples or nations, in any form or on any pretext; that the principles of the Declaration should be universally applicable to all the peoples of the world, without limitation of time or geography, or limitation as to race, creed or colour, not only for the achievement, but also for the preservation of their full and absolute independence; and that independence should depend solely on the free will and determination of the peoples themselves and not on any other influence.²⁹ In the same context, the ideas were expressed that the right of peoples to the use of their natural wealth was an integral part of the right to self-determination; that the right to self-determination included the right of every people to choose its own form of government, to enjoy its spiritual and material patrimony without restriction, to live freely in accordance with its most cherished traditions and to be exempt from any form of subjection to any more powerful nation or people; that the universal purposes of the Declaration were those underlying the dignity of the human being and the right of peoples to live freely, in other words, the freedom of each people to become an independent nation, to choose the political system which most closely corresponded to its traditions and ideals and to live the life it wished, subject to recognition of and respect for the same rights of all other peoples.³⁰ It was observed that people throughout the world look on freedom and self-determination not only as conducive to human dignity and the assertion of human personality, but also as elements of peace and conditions necessary for effective progress and international co-operation. Indeed, the wider the extent of self-determination, the broader the basis for peace in the world, since freedom is as indivisible as peace. Relations between dominant and sub-

ject peoples should be replaced by relations between free peoples on a footing of equality and trust. In that way, co-operation and peace could take the place of antagonism and war.³¹ It was considered that the Declaration revitalized the spirit of the Charter, restored strength to the Charter provisions on self-determination and gave a new sense of reality and greater validity to the Universal Declaration of Human Rights. The new Declaration would be an epoch-making document, on an equal footing with the Charter and the Universal Declaration.³²

42. At its seventeenth session, on 14 December 1962, the General Assembly adopted resolution 1803 (XVII), on "Permanent sovereignty over natural resources", this being a basic constituent of the right of peoples to self-determination. In part I of the operative part of this resolution the General Assembly laid down the following principles:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith: States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

43. At its twentieth session, the General Assembly, in resolution 2105 (XX) of 20 December 1965, entitled "Im-

²⁶ *Ibid.*, 928th meeting, paras. 90-91, and 931st meeting, para. 53.

²⁷ *Ibid.*, 930th meeting, paras. 78 and 84.

²⁸ *Ibid.*, 932nd meeting, paras. 44 and 48, 933rd meeting, para. 137, and 937th meeting, paras. 137-138.

²⁹ *Ibid.*, 935th meeting, paras. 81, 93, 104 and 105.

³⁰ *Ibid.*, 939th meeting, paras. 85, 87 and 88.

³¹ *Ibid.*, 945th meeting, paras. 87 and 187.

³² *Ibid.*, paras. 107-109.

plementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", recognized the legitimacy of the struggle of peoples under colonial rule to exercise their right to self-determination and independence and invited all States to provide material and moral assistance to the national liberation movements in colonial territories. The same principles were reaffirmed in resolution 2189 (XXI) of 13 December 1966, which also dealt with the implementation of the Declaration. At its twentieth session, the General Assembly included the following principle in the "Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples" (resolution 2037 (XX) of 7 December 1965):

Principle III

Young people shall be brought up in the knowledge of the dignity and equality of all men, without distinction as to race, colour, ethnic origins or beliefs, and in respect for fundamental human rights and for the right of peoples to self-determination.

B. Article 1 of the International Covenants on Human Rights

44. In the course of preparing the drafts of the International Covenants on Human Rights, the Commission on Human Rights considered the question of the right to self-determination at its eighth session in 1952 (252nd-266th meetings).³³ During the discussion, various opinions were expressed with regard to the definition of the right to self-determination, its economic aspects and certain problems to which the right gives rise.³⁴ As regards the definition of the right to self-determination, some members maintained, *inter alia*, that: (a) the reference to that right in Articles 1 and 55 of the Charter appeared to be a recognition of the sovereignty of States and their obligation to respect the sovereignty of other States; (b) the right to self-determination meant the right of a people to decide on its international status (access to independence, association, secession, union, etc.); (c) the right belonged to peoples struggling for their independence; (d) the right also belonged to peoples which had already formed independent national States whose independence was threatened; (e) the right of peoples to self-determination meant their right freely to determine by and for themselves their political, economic, social and cultural status; (f) it was unnecessary to attempt to define self-determination, which should be proclaimed for all peoples, with special emphasis on the peoples of the Non-Self-Governing Territories. The opinion was expressed that the right to self-determination should be regarded not only from the political, but also from the economic viewpoint, since political independence was based on economic independence, and that the right of peoples freely to dispose of their natural resources should be recognized. The recognition of that right would not mean that States could arbitrarily denounce agreements they had concluded concerning the exploitation of natural resources, but it would settle the matter of relations between nations and foreign private undertakings which made large profits by exploiting a country's natural resources without, in most cases, being affected by its laws. The realization of the right to self-determination

in accordance with United Nations principles should enable any State to acquire complete control of its natural resources and should place it in a position to apply its national laws to any private industry, even if those laws authorized the expropriation or nationalization of certain undertakings on fair conditions. It was further pointed out that the right to self-determination raised a certain number of problems requiring study, for example: the provision of international guarantees against any aggression liable to deprive peoples of their right to self-determination; recommendations concerning peoples governed by foreign Powers, when they wished to obtain independence; and the international protection of under-developed nations.

45. At the end of the discussion, the Commission on Human Rights adopted the following resolution:

The Commission on Human Rights

Resolves to insert in the draft covenants on human rights, the following article on the right of peoples and nations to self-determination:

"1. All peoples and all nations shall have the right of self-determination, namely, the right freely to determine their political, economic, social and cultural status.

"2. All States, including those having responsibility for the administration of Non-Self-Governing and Trust Territories and those controlling in whatsoever manner the exercise of that right by another people, shall promote the realization of that right in all their territories, and shall respect the maintenance of that right in other States, in conformity with the provisions of the United Nations Charter.

"3. The right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States".³⁵

46. In 1955, at the tenth session of the General Assembly, article 1 of the draft covenants, as adopted by the Commission on Human Rights, was considered by the Third Committee (641st-655th and 667th-677th meetings).³⁶ The general debate included a discussion of the question whether the draft covenants should contain an article on the right to self-determination. Those who opposed the inclusion of an article on self-determination affirmed, *inter alia*, that the Charter referred to the "principle", not the "right", of self-determination. As a principle, it had very strong moral force, but it was too complex to be translated into legal terms in a mandatory instrument. It was added that the principle of self-determination was interpreted in different ways in different places and raised sensitive problems such as that of minorities and the right of secession. Finally, self-determination was said to be a collective right and therefore inappropriate for inclusion in an instrument which was attempting to lay down the rights of individuals. Those who favoured the inclusion of an article on self-determination in the draft covenants insisted that the right to self-determination was essential for the enjoyment of all other human rights. Although the right to self-determination was a collective right, it nevertheless affected every individual. To be deprived of the right to self-determination entailed the loss of individual human rights. Since the Charter referred to the right to self-determination as a principle, any Member State which had accepted that principle was committed to respecting the right that derived from it, which was of a universal and

³³ See *Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4 (E/2256)*, paras. 20 et seq.

³⁴ *Ibid.*, paras. 34-50.

³⁵ *Ibid.*, para. 91.

³⁶ *Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28-1, document A/3077*, paras. 27-77.

permanent character. At its 655th meeting, the Third Committee decided to appoint a working party to consider article 1 of the draft international covenants on human rights and to submit a text to the Committee. The text prepared by the Working Party read as follows:

1. All peoples have the right to self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development.

2. The peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the Covenant having responsibility for the administration of Non-Self-Governing and Trust Territories shall promote the realization of the right of self-determination in such Territories in conformity with the provisions of the United Nations Charter.³⁷

47. With regard to paragraph 1 of the text, it was pointed out that the word "nations" had been deleted, since "peoples" was considered to be the more comprehensive term and was used in the Preamble to the Charter. The second sentence of the paragraph had been recast to meet the objection that a people might determine its political status, but not its economic, social and cultural status. With regard to paragraph 2 (paragraph 3 of the Commission's text), it was explained that the Working Party had deleted the reference to "permanent sovereignty" and had redrafted the paragraph to meet the objection that it could be invoked to justify expropriation without proper compensation. The fact that the Working Party's text referred to international law and international economic co-operation should allay any fears regarding foreign investments in a country, while the words "based upon the principle of mutual benefit" would provide certain safeguards. Paragraph 3 of the Working Party's text, it was claimed, made clear the obligations which the administering authorities would have under the covenants and related them to the obligations already assumed under the Charter. It was also pointed out that the words "in conformity with the provisions of the United Nations Charter" applied not only to the provisions of Chapters XI and XII and to Article 1, but to the Charter as a whole, and that the obligation of the administering authorities to promote self-determination in Non-Self-Governing and Trust Territories was implicit in the spirit and letter of the Charter. It was further explained that the paragraph referred only to Trust and Non-Self-Governing Territories, because the achievement of independence by the peoples living in those Territories was the most urgent problem. In any case, paragraph 1 asserted the right to self-determination as a universal right. It was observed, however, that the text departed from General Assembly resolution 545 (VI),³⁸ since that resolution referred to "all States, including those having responsibility for the administration of Non-Self-Governing Territories". In order to bring the two texts into line, it was proposed that paragraph 3 of article 1 of the Covenants should be reworded as follows:

*All the States parties to the Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the United Nations Charter.*³⁹

³⁷ *Ibid.*, para. 57.

³⁸ See para. 33 above.

³⁹ *Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28-1, document A/3077, para. 59.*

However, the text of article 1 of the two International Covenants on Human Rights as adopted by the Third Committee and subsequently by the General Assembly (resolution 2200 (XXI) of 16 December 1966 by which the General Assembly adopted and opened for signature and ratification the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights) reads as follows:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based on the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

C. The right to self-determination and the anti-colonial struggle

48. The resolutions concerning the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and the elimination of colonialism, which were adopted by the General Assembly from its twenty-first session in 1966 to its twenty-ninth session in 1974,⁴⁰ recognize the legitimacy of the struggle of the colonial peoples and peoples under alien domination to exercise their right to self-determination and independence by all the necessary means at their disposal.

49. In resolution 2621 (XXV) of 12 October 1970, entitled "Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", the General Assembly developed the United Nations anti-colonialist thesis along the following lines:

(a) The continuation of colonialism in any of its forms or manifestations is a crime which constitutes a violation of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the principles of international law;

(b) Colonial peoples have the inherent right to struggle by all necessary means at their disposal against colonial Powers which suppress their aspiration for freedom and independence;

(c) Member States should render all necessary moral and material assistance to the peoples of colonial Territories in their struggle to attain freedom and independence;

(d) All freedom fighters under detention should be treated in accordance with the relevant provisions of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949.⁴¹

⁴⁰ Resolutions 2189 (XXI) of 13 December 1966, 2326 (XXII) of 16 December 1967, 2465 (XXIII) of 20 December 1968, 2548 (XXIV) of 11 December 1969, 2708 (XXV) of 14 December 1970, 2878 (XXVI) of 20 December 1971, 2908 (XXVII) of 2 November 1972, 3163 (XXVIII) of 14 December 1973 and 3328 (XXIX) of 16 December 1974.

⁴¹ United Nations, *Treaty Series*, vol. 75, p. 135.

50. In the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations, adopted by the General Assembly in resolution 2627 (XXV) of 24 October 1970, Member States declared *inter alia* the following:

We reaffirm the inalienable right of all colonial peoples to self-determination, freedom and independence and condemn all actions which deprive any people of these rights. In recognizing the legitimacy of the struggle of colonial peoples for their freedom by all appropriate means at their disposal, we call upon all Governments to comply in this respect with the provisions of the Charter, taking into account the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the United Nations in 1960. We re-emphasize that these countries and peoples are entitled, in their just struggle, to seek and to receive all necessary moral and material help in accordance with the purposes and principles of the Charter.

51. Principles analogous to those referred to in paragraphs 48-50 above were reaffirmed in resolution VIII of the International Conference on Human Rights, adopted on 11 May 1968,⁴² and in the General Assembly resolutions entitled "The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights".⁴³

52. In a number of resolutions dealing with the activities of foreign economic and other interests which were impeding the implementation of the Declaration on the granting of independence to colonial countries and peoples in Southern Rhodesia, Namibia and territories under Portuguese domination, and in all other territories under colonial domination, and with efforts to eliminate colonialism, *apartheid* and racial discrimination in southern Africa,⁴⁴ the General Assembly reaffirmed the inalienable right of peoples of dependent territories to self-determination and independence and to the enjoyment of the natural resources of their territories, as well as their right to dispose of those resources in their best interests. The General Assembly further expressed the following ideas: (a) colonial Powers which deprive colonial peoples of the exercise and full enjoyment of these rights, or which put the economic or financial interests of their own nationals or of nationals of other countries before those of the indigenous population, are violating their obligations under the United Nations Charter; and (b) any practice which leads to the exploitation of the natural resources of territories under colonial domination contrary to the interests of the indigenous population, or which results in the violation of its economic and social rights and the perpetuation of colonial régimes, runs counter to the principles of the Charter and impedes the full and rapid implementation of the Declaration in those territories.

53. In resolution 3103 (XXVIII), "Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes", adopted on 12 December 1973, the General Assembly solemnly proclaimed the following principles:

1. The struggle of peoples under colonial and alien domination and racist régimes for the implementation of their right to self-determination and independence is legitimate and in full accordance with the principles of international law.

⁴² Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968 (United Nations publication, Sales No. E.68.XIV.2), pp. 9-10.

⁴³ Resolutions 2649 (XXV), 2787 (XXVI), 2955 (XXVII), 3070 (XXVIII) and 3246 (XXIX).

⁴⁴ Resolutions 2288 (XXII), 3117 (XXVIII) and 3299 (XXIX).

2. Any attempt to suppress the struggle against colonial and alien domination and racist régimes is incompatible with the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples and constitutes a threat to international peace and security.

3. The armed conflicts involving the struggle of peoples against colonial and alien domination and racist régimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions, and the legal status envisaged to apply to the combatants in the 1949 Geneva Conventions and other international instruments is to apply to the persons engaged in armed struggle against colonial and alien domination and racist régimes.

4. The combatants struggling against colonial and alien domination and racist régimes captured as prisoners are to be accorded the status of prisoners of war and their treatment should be in accordance with the provisions of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949.

5. The use of mercenaries by colonial and racist régimes against the national liberation movements struggling for their freedom and independence from the yoke of colonialism and alien domination is considered to be a criminal act and the mercenaries should accordingly be punished as criminals.

6. The violation of the legal status of the combatants struggling against colonial and alien domination and racist régimes in the course of armed conflicts entails full responsibility in accordance with the norms of international law.

D. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

54. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in resolution 2625 (XXV) of 24 October 1970 on the occasion of the twenty-fifth anniversary of the United Nations, is of the greatest importance in the progressive development and codification of the principle of equal rights and self-determination of peoples. In this connexion, the general part of the Declaration states that:

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

55. The General Assembly further declared that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

56. Three paragraphs of the preamble to the Declaration refer to the principle of equal rights and self-determination of peoples, namely the following:

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter.

57. A part of the Declaration is devoted to the principle of equal rights and self-determination of peoples. The contents of this part are the outcome of discussions in the Sixth Committee of the General Assembly at its twentieth session and of the work of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States at all its sessions between 1966 and 1970.⁴⁵

58. During the discussions in the Sixth Committee of the General Assembly, at its twentieth session, on the item "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations",⁴⁶ it was pointed out that the principle of self-determination of peoples mentioned in Article 1, paragraph 2, and again in Article 55 of the Charter, was an indispensable element of friendly relations and was closely related to the principle of sovereign equality laid down in Article 2, paragraph 1. As to the nature of the principle, the view was expressed that it was a binding rule of international law, as had been recognized in the Charter and various decisions of the General Assembly, in particular resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples. With regard to the scope of the principle, reference was made to the elimination of colonialism, the right of colonial peoples to independence and to decide freely on their political status and institutions, their right to choose their own economic, social and cultural systems and their right to dispose freely of their natural resources. It was pointed out that the administering authorities did not exercise full sovereignty over Non-Self-Governing Territories, but had a duty to help those Territories to develop the form of government they chose, and that the principle protected newly independent States against interference in their internal affairs and safeguarded their rights of sovereignty. It was considered that it would be difficult to define the "peoples" enjoying the right to self-determination; States, in the international sense, were clearly peoples, but further study was required to determine what other social groups should be included in the definition. Some representatives did not think that the principle offered a basis for asserting a right to secession from a State. It was also maintained that peoples were entitled to use force in their assertion of the right to self-determination, in particular in self-defence against colonial repression or aggression; but that, on the other hand, colonial Powers had no right to use force against such movements, nor did other States have the right to come to the aid of colonial Powers.

59. During the Special Committee's consideration of the substance of the principle of equal rights and self-determination of peoples, several delegations held that the historical

⁴⁵ See *Official Records of the General Assembly, Twenty-first Session, Annexes*, document A/6230, paras. 456-521; *ibid.*, *Twenty-second Session, Annexes*, document A/6799, paras. 171-235; *ibid.*, *Twenty-third Session*, agenda item 87, document A/7326, paras. 135-203; *ibid.*, *Twenty-fourth Session, Supplement No. 19* (A/7619), paras. 137-192; *ibid.*, *Twenty-fifth Session, Supplement No. 18*, (A/8018), paras. 26-29. See also A/AC.125/SR.40,41,43,44; SR.68-70; SR.91-93 and SR.104-107.

⁴⁶ *Ibid.*, *Twentieth Session, Annexes*, agenda items 90 and 94, document A/6165, paras. 56-61.

and political origins of the principle were closely linked with the national history of the majority of Member States and with their struggles to gain or to defend their freedom and independence. It was observed that the principle had been accepted since the end of the nineteenth century as one of the basic elements of modern democracy. Many quite recent international instruments had confirmed the principle, in particular, the Charter of the United Nations (Article 1, paragraph 2, and Articles 55, 73 and 76), the International Covenants on Human Rights and various General Assembly resolutions, including resolution 1514 (XV) containing the Declaration on the granting of independence to colonial countries and peoples, and resolutions 1702 (XVI), 1807 (XVII), 1810 (XVII), 2105 (XX), 2131 (XX), 2160 (XXI), 2403 (XXIII) and 2465 (XXIII), adopted between 1961 and 1968. The principle was also confirmed in Security Council resolutions, in particular resolution 246 (1968) of 14 March 1968. The view was expressed that the above General Assembly resolutions should be considered as a source of law, since they had been adopted by an overwhelming majority.

60. It was pointed out that the principle of equal rights and self-determination of peoples was a cardinal element of the Charter, being the basis on which friendly relations between States should develop. The link between friendly relations and international co-operation on the one hand, and respect for the principle on the other hand, was established by the provisions of Article 1, paragraph 2, and Article 55 of the Charter. It was further pointed out that the principle was the basis of other principles which the Committee had to define, such as the principle of the sovereign equality of States, the principle of non-intervention and to some extent the principle of prohibition of the use of force. It was also observed that Article 55 of the Charter placed the principle in the context of human rights.

61. The view was expressed that the right to self-determination was a legal right, the existence of which was generally recognized. Various international instruments, including the United Nations Charter and many General Assembly resolutions, established the fact that the principle was a legal right. Some representatives expressed preference for the term "principle", used in the Charter, since they considered that there was still some doubt as to how the term "right" should be interpreted in relation to the concept of self-determination.

62. It was observed that the principle comprised two notions, that of equal rights and that of self-determination; they were complementary and inseparable. Equal rights meant that all peoples had equal and inalienable rights to complete freedom, the exercise of full sovereignty, the integrity of their national territory, peace and security, civilization and progress. Similarly, all peoples had the right to determine their political status and to pursue their economic, social and cultural development. The general enunciation of the principle should express those two notions. As far as the first notion was concerned, it was considered insufficient to assert the equal rights of peoples and to say that they all had the same rights to the same degree and could exercise them freely; it must also be asserted that every State had the duty to respect the rights of other States.

63. With regard to the beneficiaries of the principle and the meaning of the word "peoples", several representatives pointed out that the term should be given the broadest

possible definition; the principle had to be formulated so as to take account of all peoples. One of the views expressed was that in exceptional cases peoples living, for example, in a region geographically distinct and ethnically and culturally different from the rest of a State's territory should be allowed, with appropriate safeguards, to exercise their right to self-determination. A contrary opinion was that such an interpretation of the word "peoples" represented interference in the domestic affairs of States and an encouragement to secession. To proclaim the principle that any tribal, racial, ethnic or religious group had the right to self-determination would be to widen the scope of the principle to the point of absurdity. According to another view, based on Chapters XI, XII, and XIII of the Charter and on United Nations practice, the term "peoples" meant peoples who did not have equality of rights with the people of the administering authority, i.e. who had been unable to exercise their right to self-determination.

64. It was pointed out that the right to self-determination involved two fundamental and interdependent rights, namely the right of all peoples freely to determine their international status and the right of all peoples to choose their political, economic and social system. The second of those two rights included their right to develop and dispose of their natural resources. In that connexion it was mentioned that under General Assembly resolution 1314 (XIII) of 12 December 1958, the permanent sovereignty of peoples over their natural resources was a basic constituent of the right to self-determination. Reference was made to the duty of all States to allow peoples under their authority to determine freely their constitutional, political and economic status.

65. It was pointed out that international law recognized in general that the subjection of peoples to alien domination, including racial discrimination and any form of colonialism or neo-colonialism, constituted a violation of the principle; the practice of colonialism was a negation of the principle of equal rights and self-determination of peoples. It was important that the enunciation of that principle should condemn all forms of domination and oppression, and in particular neo-colonialist economic activities.

66. The view was expressed that administering authorities should be prohibited from undertaking any armed action or repressive measures of any kind against peoples under colonial rule. The use of force against oppressed peoples fighting for their independence was a crime against peace and a violation of the Charter. Force should not be used to maintain and perpetuate colonialism.

67. It was asserted that peoples under colonial rule and therefore unable to exercise the rights inherent in the principle of self-determination, had the right to overthrow colonialism by any means, including the use of force. The legitimacy of their struggle had been recognized in General Assembly and Security Council resolutions and was part of the principle that whoever possessed a right should possess the means of exercising it. Moreover, under the Charter and the relevant General Assembly resolutions, those peoples had the right to seek and obtain the assistance of other States in their struggle, and such States had the right and even the duty to give that assistance. It was maintained in addition that the formulation of the principle should include the right of self-defence, which any dependent people was entitled to exercise when other means failed. Moreover, the enunciation of the principle should include the

obligation of all States to co-operate with the United Nations and help it to discharge its responsibilities in regard to the elimination of colonialism.

68. It was observed that the enunciation of the principle should define the obligations of the administering authorities, and especially their obligation to grant independence without delay.

69. It was stated that under international law a colonial territory could not be considered an integral part of the territory of the colonial Power; relations between the administering authority and territories were international relations, based essentially on the Charter and not on a national constitution.

70. Emphasis was placed on the close relationship between the principle of equal rights and self-determination of peoples on the one hand, and human rights on the other.

71. The view was expressed that the formulation by the Committee of rules on the secession of a people from the State in which it was living, would constitute interference in the domestic affairs of States.

72. With regard to the application of the principle to relations between States, it was pointed out that there must be a clear affirmation, as part of the definition of the principle, that every State was under a duty to refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State. The principle should not, moreover, be used as a pretext to justify dangerous secessionist movements.

73. Following its discussions, the Special Committee, at its last session in 1970, adopted the following wording for the principle, this being the text which appears in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

- (a) To promote friendly relations and co-operation among States; and
- (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible

action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

E. The right to self-determination in relation to economic development

74. Certain United Nations instruments dealing with the principles governing international trade relations and trade policies conducive to development, with the establishment of a new international economic order and with the economic rights and duties of States are of special importance as regards the creation of conditions that assist peoples in the pursuit of their economic development as a fundamental element of the right to self-determination.

1. THE PRINCIPLES GOVERNING INTERNATIONAL TRADE RELATIONS AND TRADE POLICIES CONDUCTIVE TO DEVELOPMENT

75. The first session of the United Nations Conference on Trade and Development, held in 1964, recommended a series of general and special principles to govern international trade relations and trade policies conducive to development. The following principles are of special interest for the purposes of the present study:

General Principle One

Economic relations between countries, including trade relations, shall be based on respect for the principle of sovereign equality of States, self-determination of peoples, and non-interference in the internal affairs of other countries.

[...]

General Principle Three

Every country has the sovereign right freely to trade with other countries, and freely to dispose of its natural resources in the interest of the economic development and well-being of its own people.

General Principle Four

Economic development and social progress should be the common concern of the whole international community and should, by increasing economic prosperity and well-being, help strengthen peaceful relations and co-operation among nations. Accordingly, all countries pledge themselves to pursue internal and external economic policies designed to accelerate growth throughout the world, and in particular to help promote, in developing countries, a rate of growth consistent with the need to bring about a substantial and steady increase in average income, in order to narrow the gap between the standard of living in developing countries and that in the developed countries.

General Principle Five

National and international economic policies should be directed towards the attainment of an international division of labour in

harmony with the needs and interests of developing countries in particular, and of the world as a whole. Developed countries should assist the developing countries in their efforts to speed up their economic and social progress, should co-operate in measures taken by developing countries for diversifying their economies, and should encourage appropriate adjustments in their own economies to this end.

General Principle Six

International trade is one of the most important factors in economic development. It should be governed by such rules as are consistent with the attainment of economic and social progress and should not be hampered by measures incompatible therewith. All countries should co-operate in creating conditions of international trade conducive, in particular, to the achievement of a rapid increase in the export earnings of developing countries and, in general, to the promotion of an expansion and diversification of trade between all countries, whether at similar levels of development, at different levels of development, or having different economic and social systems.

[...]

General Principle Fourteen

Complete decolonization, in compliance with the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples and the liquidation of the remnants of colonialism in all its forms, is a necessary condition for economic development and the exercise of sovereign rights over natural resources.⁴⁷

76. At its third session, in 1972, the United Nations Conference on Trade and Development adopted 13 principles in resolution 46 (III) of 18 May 1972, entitled "Steps to achieve a greater measure of agreement on principles governing international trade relations and trade policies conducive to development". Of those principles, the following are of particular relevance to this study:

[...]

II. Every country has the sovereign right freely to dispose of its natural resources in the interest of the economic development and well-being of its own people; any external, political or economic measures or pressure brought to bear on the exercise of this right is a flagrant violation of the principles of self-determination of peoples and non-intervention, as set forth in the Charter of the United Nations and, if pursued, could constitute a threat to international peace and security;

[...]

V. The international community has the responsibility of eliminating any impediments to the growth and development of the developing countries and thus contributing to the creation of a world economic environment conducive to progress, prosperity and the attainment of collective economic security;

VI. Developing countries should participate on the basis of equality with other members of the international community in any prior consultations and decision-making in the reform of the world trade and monetary system; and developed countries should not take any unilateral decisions which directly or indirectly affect the social and economic development of developing countries.⁴⁸

2. THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER

77. At its sixth special session, the General Assembly adopted the "Declaration on the Establishment of a New International Economic Order" (resolution 3201 (S-VI) of 1 May 1974), which contains affirmations and principles of great importance for the present study. For instance, the

⁴⁷ *Proceedings of the United Nations Conference on Trade and Development*, Vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), pp. 18-21.

⁴⁸ *Proceedings of the United Nations Conference on Trade and Development*, Third Session, Vol. I, *Report and Annexes* (United Nations publications, Sales No. E.73.II.D.4), pp. 59-60.

Declaration states that the greatest and most significant achievement during the last decades has been the independence from colonial and alien domination of a large number of peoples and nations, but that the remaining vestiges of alien and colonial domination, foreign occupation, racial discrimination, *apartheid* and neo-colonialism in all its forms continue to be among the greatest obstacles to the full emancipation and progress of the developing countries and all the people involved. The Declaration asserts that the new international economic order should be founded on full respect for certain principles, including:

(a) Sovereign equality of States, self-determination of all peoples inadmissibility of the acquisition of territories by force, territorial integrity and non-interference in the internal affairs of other States;

[...]

(d) The right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result;

(e) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;

(f) The right of all States, territories and peoples under foreign occupation, alien and colonial domination or *apartheid* to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples;

(g) Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries;

(h) The right of the developing countries and the peoples of territories under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities;

(i) The extending of assistance to developing countries, peoples and territories which are under colonial and alien domination, foreign occupation, racial discrimination or *apartheid* or are subjected to economic, political or any other type of coercive measures to obtain from them the subordination of the exercise of their sovereign rights and to secure from them advantages of any kind, and to neo-colonialism in all its forms, and which have established or are endeavouring to establish effective control over their natural resources and economic activities that have been or are still under foreign control.

3. THE CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

78. The decision to draw up a charter of economic rights and duties of States was taken by the United Nations Conference on Trade and Development in its resolution 45 (III) of 18 May 1972. The preamble to this resolution states, *inter alia*, that:

the Universal Declaration of Human Rights and the International Covenants on Human Rights make the full exercise of those rights dependent on [...] the principle of self-determination of peoples and of the free-disposition of their wealth and natural resources.⁴⁹

79. The Charter of Economic Rights and Duties of States, adopted by the United Nations General Assembly in

resolution 3281 (XXIX) of 12 December 1974, contains important provisions which are of particular significance for the development of the right to self-determination. The Charter includes equal rights and self-determination of peoples among the "fundamentals of international economic relations". The others are: sovereignty, territorial integrity and political independence of States; sovereign equality of all States; non-aggression; non-intervention; mutual and equitable benefit; peaceful coexistence; peaceful settlement of disputes; remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development; fulfilment in good faith of international obligations; respect for human rights and fundamental freedoms; no attempt to seek hegemony and spheres of influence; promotion of international social justice; international co-operation for development; and free access to and from the sea by land-locked countries within the framework of the above principles.

80. In article 1, the Charter of Economic Rights and Duties of States proclaims the sovereign and inalienable right of every State to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever. In article 2, it recognizes that every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities; and that each State has the right to regulate foreign investment within its national jurisdiction, to regulate and supervise the activities of transnational corporations, and to nationalize, expropriate or transfer ownership of foreign property. At the same time, in article 32, the Charter provides that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights. In article 4, the Charter recognizes the right of every State to engage in international trade and other forms of economic co-operation irrespective of any differences in political, economic and social systems and declares that no State shall be subjected to discrimination of any kind based solely on such differences. In article 7, it also recognizes that every State has the primary responsibility to promote the economic, social and cultural development of its people and that, to this end, each State has the right and the responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development; all States have the duty, individually and collectively, to co-operate in eliminating obstacles that hinder such mobilization and use. In article 9, it recognizes that all States have the responsibility to co-operate in the economic, social, cultural, scientific and technological fields for the promotion of economic and social progress throughout the world, especially that of the developing countries. In article 17, the Charter states that international co-operation for development is the shared goal and common duty of all States and that every State should co-operate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty. In article 24, the Charter provides that all States have the duty to conduct their

⁴⁹ *Ibid.*, pp. 58-59.

mutual economic relations in a manner which takes into account the interests of other countries and that, in particular, all States should avoid prejudicing the interests of developing countries. In article 14, it declares that all States should co-operate, *inter alia*, towards the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade and that, to these ends, co-ordinated efforts shall be made to solve in an equitable way the trade problems of all countries, taking into account the specific trade problems of the developing countries. In article 31, the Charter proclaims the duty of States to contribute to the balanced expansion of the world economy. In article 13, it recognizes that every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social development and that, accordingly, developed countries should co-operate with the developing countries in the establishment, strengthening and development of their scientific and technological infrastructures and their scientific research and technological activities so as to help to expand and transform the economies of developing countries.

F. The right to self-determination in relation to social development

81. The Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV) of 11 December 1969) is the chief instrument adopted by the United Nations to promote the right of peoples to social development.

82. The Declaration notes that man can achieve complete fulfilment of his aspirations only within a just social order and that it is consequently of cardinal importance to accelerate social and economic progress everywhere, thus contributing to international peace and solidarity; and that international peace and security on the one hand, and social progress and economic development on the other, are closely interdependent and influence each other. It emphasizes the interdependence of economic and social development in the wider process of growth and change, as well as the importance of a strategy of integrated development which takes full account at all stages of its social aspects. It appeals to Member States to promote social development throughout the world, and in particular to assist developing countries to accelerate their economic growth, and stresses that the primary task of all States and international organizations is to eliminate from the life of society all evils and obstacles to social progress, particularly such evils as inequality, exploitation, war, colonialism and racism. The Declaration proclaims the principles, objectives and means and methods of social progress and development.

G. The right to self-determination in relation to cultural development

83. The Declaration of the Principles of International Cultural Co-operation,⁵⁰ proclaimed by the General Conference of UNESCO at its fourteenth session, on 4 November 1966, contains certain principles concerning the right of peoples to choose their cultural system and freely to pursue their cultural development. In addition, the Declaration re-

fers to the means of implementing this right. The Special Rapporteur proposes to take these principles as a basis for his study of this right, which derives from the right to self-determination.

84. The United Nations instruments quoted in the preamble to the Declaration include the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples. Taken as a whole, therefore, the Declaration of the Principles of International Cultural Co-operation must be interpreted in the particular light of the right to self-determination.

85. As mentioned in article IV, paragraph 3, one of the aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, is "to contribute to the application of the principle set out in the United Nations declarations" referred to in the preamble to the UNESCO Declaration.

86. From the point of view of this study, the most important principles of the Declaration of the Principles of International Cultural Co-operation are the following: (a) every people has the right and the duty to develop its culture; (b) every culture has a dignity and value which must be respected and preserved; (c) nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind; (d) in their cultural relations, States shall bear in mind the principles of the United Nations.

87. Resolution 3148 (XXVIII), adopted by the General Assembly on 14 December 1973, entitled "Preservation and further development of cultural values", affirms the sovereign right of each State to formulate and implement, in accordance with its own conditions and national requirements, the policies and measures conducive to the enhancement of its cultural values and national heritage, stresses that the value and dignity of each culture as well as the ability to preserve and develop its distinctive character is a basic right of all countries and peoples and expresses the conviction that, on the one hand, intensified efforts must be made to prevent the misuse or abuse of scientific and technological developments, which endanger the distinctive character of all cultures, and that, on the other hand, all necessary steps have to be taken towards the preservation, enrichment and further development of national cultures and ways of life. It urges Governments to make cultural values, both material and spiritual, an integral part of development efforts by giving attention in particular to the following:

- (a) The fullest possible access of all people to places, buildings, facilities and institutions which serve as media of cultural transmission and form a system of ideas promoting national culture;
- (b) The preservation and/or restoration of sites of special historical importance;
- (c) Involvement of the population in the elaboration and implementation of measures ensuring preservation and further development of cultural and moral values;
- (d) Wide education and information activity with a view to:
 - (i) Encouraging civic responsibility for the cultural heritage to enable every individual to absorb and use cultural values, both material and spiritual, as a means of advancement and development of his personality;

⁵⁰ UNESCO, *Records of the General Conference, Fourteenth Session, 1966*, Resolutions, pp. 86-89.

- (ii) Making the public aware of the social and aesthetic significance of the cultural environment;
- (iii) Enhancing and developing living values through free creative activity;
- (e) The identification, preservation and development of the varied cultural values of each region in order to maintain and make the widest possible use of local aspirations in the implementation of

development plans, especially as regards the improvement of living conditions and the general quality of life.

The resolution recognizes that contacts and exchanges among various cultures, conducted on the basis of equality and with due regard to the principle of sovereignty of States, may positively contribute to the enrichment and development of national cultures and regional cultural values.

Chapter III

GENERAL LEGAL AND POLITICAL ASPECTS OF THE PRINCIPLE OF EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES

A. The principle of equal rights and self-determination of peoples as a significant contribution to contemporary international law

88. The idea of equal rights and self-determination of peoples, which is now one of the most important and dynamic concepts in international life, exercises a very strong influence on both the political and legal planes and also on the economic, social and cultural planes and is gaining increasingly wider acceptance, with the result that it has been embodied in international law.

89. Highly authoritative evidence of this fact has recently been given by the United Nations General Assembly and the International Court of Justice.

90. In its "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" (resolution 2625 (XXV) adopted on 24 October 1970), the United Nations General Assembly declared itself

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality.

91. The International Court of Justice, in two advisory opinions, dealing, respectively, with the legal consequences for States of the continued presence of South Africa in Namibia⁵¹ and Western Sahara,⁵² stressed in similar terms the novel character of the principle of equal rights and self-determination of peoples. With regard to the development of international law concerning non-self-governing territories, the Court expressed itself as follows:

A further important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces all peoples and territories which "have not yet attained independence".⁵³

The Court continued as follows:

[...] the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law.⁵⁴

The Court concluded:

In the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and inde-

pendence of the peoples concerned. In this domain, as elsewhere, the *corpus iuris gentium* has been considerably enriched, and this the Court, if it is faithfully to discharge its functions, may not ignore.⁵⁵

92. In the process of affirming the principle of equal rights and self-determination of peoples as a constituent part of contemporary international law, the fundamental legal instrument which marks a turning-point is the Charter of the United Nations. But this principle of the Charter is an extension of the principle of nationalities on which international relations were based during the nineteenth century and at the beginning of the twentieth, the historical and political origins of the principle being closely bound up with the national history of most States Members of the United Nations and their struggles to attain or defend their freedom and independence. The French Revolution of 1789 and the Russian October Revolution of 1917 are outstanding events in the development of the principle of self-determination, which by the end of the nineteenth century was accepted as one of the basic elements of modern democracy. After the First World War, the principle acquired a distinct status among the principles of international politics and, although it was not included in the Covenant of the League of Nations, its influence made itself felt in inter-State relations.

93. Before the adoption of the Charter of the United Nations, the principle was invoked on many occasions during the Second World War. It was also proclaimed in the Atlantic Charter of 14 August 1941. In that Charter, the President of the United States of America and the Prime Minister of the United Kingdom declared that they deemed it right "to make known certain principles in the national policies of their respective countries" on which they based "their hopes for a better future for the world". These principles included the following:

[...]

2. They desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.

3. They respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.⁵⁶

The provisions of the Atlantic Charter were restated in the Declaration by the United Nations signed at Washington on 1 January 1942, in the Moscow Declaration of 1943 and in other important instruments of the time. They had some influence on the work of the San Francisco Conference of 1945, at which the principle of equal rights and self-determination of peoples took shape. The right thus created by the international community is the result of a political and

⁵¹ *I.C.J. Reports* 1971, p. 16.

⁵² *I.C.J. Reports* 1975, p. 12.

⁵³ *I.C.J. Reports* 1971, p. 31.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ League of Nations, *Treaty Series*, vol. CCIV, 1941-1943, No. 4817.

legal process in which the liberation of many peoples was an important factor.

94. The principle of equal rights and self-determination of peoples was stated in the Charter of the United Nations because the experience between the two world wars had shown that minority problems could cause international friction and should be solved as quickly as possible. At the present time, the objective of the principle is the liberation of colonial peoples.

95. It is clear that the relevant provisions of the Charter have been interpreted in an increasingly progressive spirit over the years. Today it is generally recognized that the concept of self-determination entails international legal rights and obligations and that a right of self-determination definitely exists.

96. The principle of equal rights and self-determination of peoples is a vital feature of the Charter; it is regarded as the basis on which friendly relations among nations should develop—the link between friendly relations and international co-operation, on the one hand, and respect for the principle, on the other hand, having been established by the provisions of Article 1, paragraph 2, and Article 55 of the Charter.

97. Thus the incorporation of the principle of equal rights and self-determination of peoples in the Charter of the United Nations is the culmination of a fairly long development. It marks not only the legal recognition of the principle (as a constituent part of the Charter, which is a multilateral international treaty, and as a principle of contemporary international law), but also the point of departure of a new process—the increasing dynamic development of the principle and its legal content, its implementation, and its application to the most varied situations of international life.

98. It should be stressed that the importance of the principle of equal rights and self-determination of peoples proclaimed by the Charter is generally recognized. The far-reaching changes which have occurred since the adoption of the Charter have brought out with ever-increasing force the importance which the principle has acquired, on the one hand, from its role in achieving the purposes of the United Nations and, on the other hand, from its significant position in contemporary international law and in the legal system derived from the Charter of the United Nations.

99. In the process of applying and developing the provisions of the Charter, many resolutions of the General Assembly and of other United Nations organs have emphasized the importance of the principle of equal rights and self-determination of peoples on the legal and the political planes.

100. Thus in resolution 421 D (V) of 4 December 1950, the General Assembly called upon the Economic and Social Council “to request the Commission on Human Rights to study ways and means which would ensure the right of peoples and nations to self-determination”. In resolution 545 (VI) of 5 February 1952, the Assembly stated that “the violation of this right has resulted in bloodshed and war in the past and is considered a continuous threat to peace”, and decided to include an article on the right in the International Covenants on Human Rights in order “To save the present and succeeding generations from the scourge of war”, “To reaffirm faith in fundamental human rights” and

“To take due account of the political aspirations of all peoples and thus to further international peace and security, and to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. The General Assembly further declared that “all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right, in conformity with the Purposes and Principles of the United Nations”.

101. In resolution 637 A (VII) of 16 December 1952, the General Assembly recommended that the States Members of the United Nations should uphold the principle of self-determination of all peoples and nations, recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and Trust Territories under their administration, and facilitate the exercise of that right by the peoples of such Territories.

102. In resolution 738 (VIII) of 28 November 1953, the General Assembly drew attention to “the importance of the observance of and respect for the right of self-determination in the promotion of world peace and of friendly relations between peoples and nations”.

103. The two International Covenants on Human Rights, adopted by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966, embody this right. The process of drafting and adopting the Covenants contributed to the formulation of the provision concerning the right of peoples to self-determination in the Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)).

104. The embodiment of the right of peoples to self-determination in the Declaration on the granting of independence to colonial countries and peoples is of historic importance. Not only was the principle reaffirmed, but from the practical point of view it was to constitute the prime mover in the work of decolonization undertaken by the United Nations. In this Declaration, the General Assembly *inter alia* recognized “the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence”; expressed its conviction “that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory”; and declared that: “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. This right has been reaffirmed at every session of the General Assembly between 1961 and 1975, in resolutions concerning the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.⁵⁷

105. Other General Assembly declarations and resolutions also reaffirm the right of peoples to self-determination. These are the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (resolution 2131 (XX) of 21 December 1965); the resolution entitled

⁵⁷ Resolutions 1654 (XVI), 1810 (XVII), 1956 (XVIII), 2105 (XX), 2189 (XXI), 2311 (XXII), 2326 (XXII), 2426 (XXIII), 2465 (XXIII), 2548 (XXIV), 2555 (XXIV), 2621 (XXV), 2704 (XXV), 2708 (XXV), 2878 (XXVI), 2908 (XXVII), 3118 (XXVIII), 3163 (XXVIII), 3328 (XXIX), 3300 (XXIX), 3421 (XXX), 3481 (XXX) and 3482 (XXX).

“Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination” (resolution 2160 (XXI) of 30 November 1966); the resolution entitled “Non-use of force in international relations and permanent prohibition of the use of nuclear weapons” (resolution 2936 (XXVII) of 29 November 1972); the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations (resolution 2627 (XXV) of 24 October 1970); the Declaration on the Strengthening of International Security (resolution 2734 (XXV) of 16 December 1970); the resolution entitled “Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States” (resolution 2925 (XXVII) of 27 November 1972); the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples (resolution 2037 (XX) of 7 December 1965); and the resolution entitled “Youth, its education and its responsibilities in the world of today” (resolution 3141 (XXVIII) of 14 December 1973).

106. In the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, the General Assembly recognized that,

in fulfilment of the principle of self-determination, the General Assembly, in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) of 14 December 1960, stated its conviction that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development

and solemnly declared, in paragraph 6, that:

All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

107. In the resolution entitled “Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination”, the General Assembly reaffirmed

the right of peoples under colonial rule to exercise their right to self-determination and independence and the right of every nation, large or small, to choose freely and without any external interference its political, social and economic system.

In the resolution entitled “Non-use of force in international relations and permanent prohibition of the use of nuclear weapons”, the General Assembly, referring to the right of peoples to self-determination, reaffirmed “its recognition of the legitimacy of the struggle of colonial peoples for their freedom by all appropriate means at their disposal”.

108. In the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations, the representatives of the States Members of the United Nations reaffirmed, in pursuance of the purposes of the Charter, their determination to respect the principles of international law concerning friendly relations and co-operation among States. They declared that they would exert their utmost efforts to develop such relations among all States, irrespective of their political, economic and social systems, on the basis of strict observance of the principles of the Charter, including the self-determination of peoples. On that occasion, they reaf-

firmed the inalienable right of all colonial peoples to self-determination, freedom and independence and condemned all actions which deprived any people of those rights.

109. The Declaration on the Strengthening of International Security called upon all States to adhere strictly in their international relations to the purposes and principles of the Charter, including the principle of equal rights and self-determination of peoples. The General Assembly further called upon all States to

desist from any forcible or other action which deprives peoples, in particular those still under colonial or any other form of external domination, of their inalienable right to self-determination, freedom and independence and to refrain from military and repressive measures aimed at preventing the attainment of independence by all dependent peoples in accordance with the Charter and in furtherance of the objectives of General Assembly resolution 1514 (XV) of 14 December 1960, and render assistance to the United Nations and, in accordance with the Charter, to the oppressed peoples in their legitimate struggle in order to bring about the speedy elimination of colonialism or any other form of external domination.

In the resolutions adopted concerning the Implementation of the Declaration on the Strengthening of International Security (resolutions 2880 (XXVI) of 21 December 1971, 2993 (XXVII) of 15 December 1972, 3185 (XXVIII) of 18 December 1973, 3332 (XXIX) of 17 December 1974 and 3389 (XXX) of 18 November 1975), the General Assembly declared that the termination of coercive acts which deprived peoples of their inalienable rights to self-determination, freedom and independence; the implementation of relevant United Nations resolutions concerning colonialism, racial discrimination and *apartheid*; and the elimination of serious and systematic violations of human rights and fundamental freedoms, which should be respected by all States, were essential elements for the strengthening of international peace and security. In the Declaration on the Deepening and Consolidation of International Détente (resolution 32/155 of 19 December 1977), the States Members of the United Nations declared their determination:

To ensure the free exercise of the right of the peoples under colonial and alien domination to self-determination and to promote majority rule, especially where racial oppression, in particular *apartheid*, has deprived peoples from exercising their inalienable rights.

110. In the resolution entitled “Strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of co-operation among all nations and the promotion of the rules of international law in relations between States” (the General Assembly recognized that it was imperative that the Organization should become a more effective instrument in safeguarding and strengthening the independence and sovereignty of all States, as well as the inalienable right of every people to decide its own fate without any outside interference.

111. In principle III of the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples the General Assembly proclaimed that:

Young people shall be brought up in the knowledge of the dignity and equality of all men, without distinction as to race, colour, ethnic origins or beliefs, and in respect for fundamental human rights and for the right of peoples to self-determination.

Similarly, in its resolution entitled “Youth, its education and its responsibilities in the world of today”, the Assembly invited the attention of Member States to

their responsibility for maintaining a policy conforming to the principles of respect for human rights and fundamental freedoms and conducive to the elimination of colonialism, racism, *apartheid* and similar policies, thus preserving and strengthening the faith of youth in these values.

112. The principle of the right of peoples to self-determination was also reaffirmed in resolution VIII of 11 May 1968 entitled "The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights", adopted by the International Conference on Human Rights at Teheran⁵⁸ and in the General Assembly resolutions adopted between 1969 and 1974 concerning the importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights.⁵⁹

113. In its resolution on the implementation of the recommendations of the International Conference on Human Rights (resolution 2588 B (XXIV) of 15 December 1969) the General Assembly, recalling resolution VIII of the International Conference on Human Rights, reaffirmed "the right of all peoples under colonial and foreign rule to liberation and self-determination" and called upon "all Governments concerned to abide by the relevant resolutions of the United Nations relating to decolonization, territorial integrity and the right to self-determination". Other resolutions adopted on the subject by the General Assembly stress the importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights, and reaffirm the inalienable right of all peoples under colonial and foreign domination to self-determination, freedom and independence.

114. "The inalienable right of the peoples of the colonial Territories to self-determination and independence and to the natural resources of their Territories, as well as their right to dispose of these resources in their best interests" was reaffirmed by the General Assembly in the resolutions it adopted between 1967 and 1975 on "Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, Namibia and Territories under Portuguese domination and in all other Territories under colonial domination and efforts to eliminate colonialism, *apartheid* and racial discrimination in southern Africa".⁶⁰

115. By special resolutions, the General Assembly has also reaffirmed *in concreto* the right of particular peoples to self-determination. These are the resolutions concerning: Southern Rhodesia;⁶¹ Namibia;⁶² Territories formerly un-

der Portuguese administration;⁶³ Antigua, the Bahamas,⁶⁴ etc.; The Falkland Islands⁶⁵ (Malvinas); French Somaliland;⁶⁶ Gibraltar;⁶⁷ Ifni and Spanish Sahara;⁶⁸ Papua; West New Guinea;⁶⁹ South Africa;⁷¹ Palestine;⁷² Niue and Tokelau Islands;⁷³ The Seychelles;⁷⁴ Guam, Gilbert and Ellice Islands etc.;⁷⁵ Bermuda, etc.;⁷⁶ Brunei;⁷⁷ The Comoro Archipelago;⁷⁸ The Solomon Islands;⁷⁹ Belize;⁸⁰ American Samoa;⁸¹ Montserrat;⁸² The New Hebrides;⁸³ and Timor.⁸⁴

116. In conclusion it may be said that, by its declarations and resolutions, the General Assembly has proclaimed or interpreted the right of peoples to self-determination, elucidated the relationship between that right and other human rights, and adopted general or specific provisions concerning its implementation.

117. The Security Council, in its resolutions 183 (1963) and 218 (1965), has also recognized the validity of the right of peoples to self-determination. In resolution 183 (1963) the Council reaffirmed the interpretation of the principle as laid down in General Assembly resolution 1514 (XV), as follows:

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2145 (XXI), 2248 (S-V), 2324 (XXII), 2325 (XXII), 2403 (XXIII), 2498 (XXIV), 2517 (XXIV), 2518 (XXIV), 2679 (XXV), 2871 (XXVI), 3031 (XXVII), 3111 (XXVIII), 3295 (XXIX), 3296 (XXIX), 3299 (XXIX) and 3400 (XXX).

⁶³ Resolutions 1542 (XV), 1603 (XV), 1699 (XVI), 1742 (XVI), 1807 (XVII), 1819 (XVII), 1913 (XVIII), 2107 (XX), 2184 (XXI), 2270 (XXII), 2395 (XXIII), 2507 (XXIV), 2707 (XXV), 2795 (XXVI), 2918 (XXVII), 3061 (XXVIII), 3113 (XXVIII) and 3294 (XXIX).

⁶⁴ Resolutions 1955 (XVIII), 2069 (XX), 2232 (XXI), 2357 (XXII), 2430 (XXIII), 2592 (XXIV), 2593 (XXIV), 2709 (XXV), 2710 (XXV), 2869 (XXVI), 2984 (XXVII) and 2987 (XXVII).

⁶⁵ Resolution 2065 (XX).

⁶⁶ Resolutions 2228 (XXI), 2356 (XXII) and 3480 (XXX).

⁶⁷ Resolutions 2070 (XX), 2231 (XXI), 2353 (XXII), 2429 (XXIII) and 3286 (XXIX).

⁶⁸ Resolutions 2072 (XX), 2229 (XXI), 2354 (XXII), 2591 (XXIV), 2711 (XXV), 2983 (XXVII), 3162 (XXVIII), 3292 (XXIX) and 3458 (XXX).

⁶⁹ Resolutions 2112 (XX), 2227 (XXI), 2348 (XXII), 2590 (XXIV), 2700 (XXV), 2865 (XXVI), 2977 (XXVII), 3109 (XXVIII) and 3284 (XXIX).

⁷⁰ Resolution 2504 (XXIV).

⁷¹ Resolutions 2144 (XXI), 2396 (XXIII), 2506 (XXIV), 2646 (XXV), 2649 (XXV), 2671 F (XXV), 2714 (XXV) and 2775 E (XXVI).

⁷² Resolutions 2672 C (XXV), 2649 (XXV), 2787 (XXVI), 2792 D (XXVI), 2963 (XXVII) and 3089 D (XXVIII).

⁷³ Resolutions 2868 (XXVI), 2986 (XXVII), 3155 (XXVIII), 3285 (XXIX) and 3428 (XXX).

⁷⁴ Resolutions 2866 (XXVI), 2984 (XXVII), 3158 (XXVIII), 3287 (XXIX) and 3430 (XXX).

⁷⁵ Resolutions 3156 (XXVIII), 3288 (XXIX), 3290 (XXIX) and 3426 (XXX).

⁷⁶ Resolutions 3157 (XXVIII), 3289 (XXIX) and 3427 (XXX).

⁷⁷ Resolution 3159 (XXVIII).

⁷⁸ Resolutions 3161 (XXVIII) and 3291 (XXIX).

⁷⁹ Resolution 3431 (XXX).

⁸⁰ Resolution 3432 (XXX).

⁸¹ Resolution 3429 (XXX).

⁸² Resolution 3425 (XXX).

⁸³ Resolution 3433 (XXX).

⁸⁴ Resolution 3485 (XXX).

⁵⁸ See foot-note 42.

⁵⁹ Resolutions 2588 B (XXIV), 2649 (XXV), 2787 (XXVI), 2955 (XXVII), 3070 (XXVIII), 3246 (XXIX) and 3282 (XXIX).

⁶⁰ Resolutions 2288 (XXII), 2425 (XXIII), 2554 (XXIV), 2703 (XXV), 2979 (XXVII), 3117 (XXVIII), 3299 (XXIX) and 3398 (XXX).

⁶¹ Resolutions 1747 (XVI), 1760 (XVII), 1883 (XVIII), 1889 (XVIII), 2012 (XX), 2022 (XX), 2024 (XX), 2138 (XXI), 2151 (XXI), 2262 (XXII), 2379 (XXIII), 2383 (XXIII), 2508 (XXIV), 2652 (XXV), 2769 (XXVI), 2796 (XXVI), 2877 (XXVI), 2945 (XXVII), 3115 (XXVIII), 3297 (XXIX), 3298 (XXIX) and 3397 (XXX).

⁶² Resolutions 1564 (XV), 1568 (XV), 1899 (XVIII), 2074 (XX),

Similarly in resolution 218 (1965) the Council reaffirmed "the interpretation of the principle of self-determination as laid down in General Assembly resolution 1514 (XV) and in Security Council resolution 183 (1963)".

118. In addition, by special resolutions, the Security Council has affirmed *in concreto* the right of particular peoples to self-determination. These resolutions relate to: Southern Rhodesia,⁸⁵ Namibia,⁸⁶ Territories formerly under Portuguese administration⁸⁷ and South Africa.⁸⁸

119. The application of the resolutions adopted *in concreto* by the United Nations is reviewed in an important study undertaken by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled *The Right to Self-Determination: Implementation of United Nations Resolutions*,⁸⁹ prepared by Mr. Héctor Gros Espiell, Special Rapporteur of the Sub-Commission.

B. Equal rights and self-determination of peoples: a rule and fundamental principle of international law

120. The principle of equal rights and self-determination of peoples is laid down by the United Nations in conventional and customary international law.

1. CONVENTIONAL LAW

121. So far as conventional law is concerned, the principle is stated in the Charter of the United Nations and the two International Covenants on Human Rights.

122. The Charter proclaims the principle in Article 1, paragraph 2, in Article 55 and implicitly in Article 73; moreover, Articles 2 and 56 of the Charter create direct obligations for Member States as regards the implementation of the provisions of Articles 1 and 55.

123. The Charter, as a general multilateral treaty, confers on the aforementioned provisions concerning equal rights and self-determination of peoples the character of conventional rules of international law.

124. Furthermore, the provisions of Article 103 of the Charter, which stipulates that:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail,

have the effect of strengthening the legal validity of the principle of equal rights and self-determination of peoples and giving it precedence over other obligations contracted by States before the Charter entered into force.

125. It should be noted that, in the two cases where it expressly mentions the principle of equal rights and self-

determination of peoples, the Charter speaks of a principle, and by using the singular emphasizes that this is a single principle.

126. However, this principle does not appear among the seven principles mentioned in Article 2 of the Charter, in accordance with which the United Nations and its Members are required to act in pursuit of the purposes of the United Nations stated in Article 1 of the Charter; it appears, instead, in Article 1, paragraph 2.

127. This situation might give rise to misunderstanding if the principle of equal rights and self-determination of peoples were considered in isolation, without taking into account its relationship with other provisions of the Charter. Such a mode of interpretation would be consistent with neither the spirit nor the intention which guided the preparatory work on the Charter at the San Francisco Conference.

128. This specific point is dealt with in the report of the Rapporteur of Committee 1 of Commission I. The section headed "General remarks" states the following:

1. It was very difficult, practically impossible, to draw a sharp and clear-cut distinction between what should be included under 'Purposes', 'Principles', or 'Preamble'. Given the nature of the substance we have in view, some single idea or norm of conduct could go into either of these divisions of the Charter without much difficulty. In fact, some questions were transferred during our deliberations from 'Purposes' to 'Principles' and found at least their final place in the 'Preamble'.

It was, however, considered and clearly understood that:

(a) The 'Preamble' introduces the Charter and sets forth the declared common intentions which brought us together in this Conference and moved us to unite our will and efforts, and made us harmonize, regulate, and organize our international action to achieve our common ends.

(b) The 'Purposes' constitute the *raison d'être* of the Organization. They are the aggregation of the common ends on which our minds met; hence, the cause and object of the Charter to which Member States collectively and severally subscribed.

(c) The chapter on 'Principles' sets, in the same order of ideas, the methods and regulating norms according to which the Organization and its members shall endeavour to achieve the common ends. Their understandings should serve as actual standards of international conduct.

The 'Purposes' and 'Principles' constitute, in practice, the test for the effectiveness of the Organization and the expected faithful compliance with the provisions of the Charter.

Members of the Commission can see from what has been said that the distinction between the three parts of the Charter under consideration is not particularly deep going. I hope, therefore, that we will all be tolerant in our individual wishes to see a given element of our thoughts go into one part rather than into another.

2. On the basis of my first general remark, I take leave to state the second.

The provisions of the Charter, being in this case indivisible as in any other legal instrument, are equally valid and operative. The rights, duties, privileges, and obligations of the Organization and its members match with one another and complement one another to make a whole. Each of them is construed to be understood and applied in function of the others.

It is for this reason, as well as to avoid undue repetition, that the Committee did not find it necessary to mention again in each paragraph relevant dispositions included in other paragraphs of the same chapter or other chapters. It was, nevertheless, unavoidable at times to make some repetition.

May the explanation given above dispel any doubts as to the validity and value of any division of the Charter, whether we call it 'Principles', 'Purposes', or 'Preamble'.

In order to quiet any apprehension and to disabuse any understanding as to a supposedly diminished legal validity of the Pream-

⁸⁵ Resolutions 216 (1965), 217 (1965), 221 (1966), 232 (1966), 253 (1968), 277 (1970), 288 (1970), 318 (1972), 326 (1973) and 328 (1973).

⁸⁶ Resolutions 264 (1969), 269 (1969), 276 (1970), 283 (1970), 284 (1970), 301 (1971), 309 (1972), 310 (1972), 319 (1972), 323 (1972) and 366 (1974).

⁸⁷ Resolutions 163 (1961), 180 (1963), 183 (1963), 218 (1965), 273 (1969), 275 (1969), 290 (1970), 312 (1972), 321 (1972) and 322 (1972).

⁸⁸ Resolutions 182 (1963) and 191 (1964).

⁸⁹ United Nations publication, Sales No. E.79.XIV.5.

ble, I found it appropriate to state the last remark, which could otherwise be taken for granted.⁹⁰

129. The explanations given in this passage of the report are extremely useful. The principle of equal rights and self-determination of peoples, which is stated in Article 1, paragraph 2, of the Charter, is connected with the provisions of Article 2. It also has a connexion with the passage of the Preamble to the Charter in which the peoples of the United Nations declare their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".

130. The validity of the international legal principle of equal rights and self-determination of peoples has been emphasized on many occasions in important resolutions of the United Nations General Assembly.

131. Thus, in the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations (General Assembly resolution 2627 (XXV)), the representatives of the States Members of the United Nations solemnly declared that, in pursuance of the purposes of the Charter, they reaffirmed their determination to respect the principles of international law concerning friendly relations and co-operation among States. They reaffirmed their deep conviction that the United Nations could provide a most effective means to strengthen the freedom and independence of nations, and the inalienable right of all colonial peoples to self-determination, freedom and independence and they condemned all actions which deprived any people of those rights.

132. In the Declaration on the Strengthening of International Security (resolution 2734 (XXV)), the General Assembly called upon all States to adhere strictly in their international relations to the purposes and principles of the Charter. The principle of equal rights and self-determination of peoples was mentioned in this context.

133. In the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)), the General Assembly included "the principle of equal rights and self-determination of peoples". It went on to declare that

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

134. The recognition by the General Assembly of the principle of equal rights and self-determination of peoples as a "principle of the Charter" and a "basic principle of international law" marks a very important step, for such recognition is calculated to put an end to the various theoretical disputes concerning the legal nature of this principle.

135. The principle of equal rights and self-determination of peoples is no longer just a moral or political postulate. Owing to the very close link which exists between self-determination and the maintenance of international peace and security, it is no longer regarded as a purely domestic matter. If a people is frustrated in its self-determination, that situation constitutes a threat to world peace and security. Article 1, paragraph 2, of the Charter makes the princi-

ple of equal rights and self-determination of peoples the basis of friendly relations among nations, and paragraph 3 of the same Article places nations under a duty to encourage respect for human rights and for fundamental freedoms for all, throughout the world. Moreover, Article 55 of the Charter, which deals with international economic and social co-operation, regards stability and well-being as conditions which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.

136. Consequently, this principle is to be regarded as an established principle, a universally recognized right under contemporary international law, and a legally binding principle enjoying universality and constituting a general rule of international law. It is a general and permanent principle of international law, which continues to apply when a State has gained sovereignty and independence; it forms part of international law considered as an organic whole; and it relates more particularly to the principles of non-interference in domestic affairs, independence and national sovereignty and to the principle of non-resort to the threat or use of force. Its recognition is a condition for the maintenance of international peace and security; for the development of friendly relations and co-operation among States; and for economic, social and cultural progress in the world at large. As a fundamental principle of international law or—to use an expression frequently employed in judicial decisions—one of the "well-known and well-established principles" of international law, the principle of equal rights and self-determination of peoples is one of the most important general rules of international law, whose binding nature stems from the fact that it is unanimously accepted and that it expresses some fundamental requirements for the life of the international community. As a principle, equal rights and self-determination of peoples is an important component of the nucleus of international law. As a general rule of international law, the principle of equal rights and self-determination of peoples plays an important part in international law as a whole; it generates the specific rules and institutions necessary for its application. The development of this principle has demonstrated the crucial importance of the principles of international law in these times of rapid change in international relations. It has also shown that, if the principles of international law are to be effectively applied, they must not only be recognized and confirmed by international instruments, but also be given tangible form as precise obligations through the adoption of corresponding measures.

137. Having now been affirmed by international law and entrenched by international practice, the principle of equal rights and self-determination of peoples underlies the idea of co-operation and the very existence of friendly relations among States. It is thus of ever-increasing practical importance in international life.

138. The character of this principle as a conventional rule of international law has been strengthened by its inclusion, as a fundamental human right. Both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights begin by solemnly proclaiming in article 1 that "All peoples have the right of self-determination".

139. Hence, it is clear that self-determination, having been classified as a right by the Charter, is a legal concept

⁹⁰ *Documents of the United Nations Conference on International Organization*, 1/1/34 (vol. VI, pp. 387-389).

which finds expression both as a principle of international law and as a subjective right.

140. To conclude our consideration of the conventional nature of the rule of international law concerning equal rights and self-determination of peoples, it may be noted that the international instruments which proclaim it, i.e. the Charter of the United Nations and the International Covenants on Human Rights, are included among the conventional sources of law envisaged in Article 38, paragraph 1, sub-paragraph *a* of the Statute of the International Court of Justice, namely "international conventions, whether general or particular, establishing rules expressly recognized by [...] states".

2. CUSTOM

141. Equal rights and self-determination of peoples is also a rule of customary law created by the United Nations.

142. Custom is defined in Article 38, paragraph 1, sub-paragraph *b*, of the Statute of the International Court of Justice as follows:

b international custom, as evidence of a general practice accepted as law.

143. The resolutions adopted by the General Assembly and the Security Council, and the decisions of the International Court of Justice, have helped to make self-determination a rule of international customary law.

144. Article 10 of the Charter provides that:

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12 [which confers sole competence on the Security Council while it is exercising in respect of any dispute or situation the functions assigned to it in the Charter], may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

145. Article 13 of the Charter provides that:

The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

146. Article 14 of the Charter provides, with regard to the functions and powers of the General Assembly, that:

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

147. The recommendations made by the General Assembly under Articles 10, 13 and 14 of the Charter with regard to self-determination have thus created a customary law of the United Nations on the subject. These recommendations have taken the form either of declarations or of resolutions.

148. Declarations are of especial importance, for according to a memorandum by the Office of Legal Affairs of the United Nations Secretariat, dated 2 April 1962:

[...] in view of the greater solemnity and significance of a 'declaration', it may be considered to impart, on behalf of the organ adopting it, a strong expectation that Members of the international community will abide by it. Consequently, in so far as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon States.⁹¹

149. In this connexion, it should be mentioned that the Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)) is of historic importance as a milestone in the progress of efforts to speed up the process of self-determination. This Declaration represents a legal and political formulation, by the international community, of the principle of equal rights and self-determination of peoples.

150. Another declaration of particular importance in this connexion is the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)). This Declaration contains the most comprehensive formulation of the principle of equal rights and self-determination of peoples and brings out the close relationship between that principle and other principles of international law concerning friendly relations and co-operation among States.

151. The legal nature of General Assembly resolutions has been debated at length in various United Nations organs, and the idea that these resolutions, like treaties, are made binding by the mere fact of their adoption has been challenged by one school of thought. But what is beyond challenge is the fact that, by a process such as that described in the memorandum by the Office of Legal Affairs mentioned in paragraph 148 above, resolutions may be considered to lay down rules which are binding upon States. They become part of customary law in general, that is to say, of the whole body of rules and principles established by general usage and recognized as having the force of law. This clearly applies to the resolutions and declarations of the United Nations concerning self-determination. They have contributed not only to the formation of the law on decolonization, but also to the interpretation and practical application of the rules of law relating to self-determination.

3. GENERAL PRINCIPLES OF LAW

152. Article 38, paragraph 1, sub-paragraph *c*, of the Statute of the International Court of Justice speaks of "the general principles of law recognized by civilized nations".

153. No United Nations instrument places equal rights and self-determination of peoples among the general principles of law referred to in the Statute of the International Court of Justice. The nature of general principles of law and their place in the hierarchy of legal rules are somewhat debatable. However, if we accept the view adopted in judicial practice that these principles are of a subsidiary character and apply only in the absence of conventional or customary rules, we may conclude that equal rights and self-determination of peoples cannot be regarded as general principles of law.

4. *JUS COGENS*

154. *Jus cogens*, the peremptory norm of general international law, has been defined in Article 53 of the 1969

⁹¹ E/CN.4/L.610, para. 4.

Vienna Convention on the Law of Treaties, which provides that:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.⁹²

This Convention has not yet entered into force. No United Nations instrument confers such a peremptory character on the right of peoples to self-determination.

C. Interrelationship between the principle of equal rights and self-determination of peoples and other principles of international law concerning friendly relations and co-operation among States

1. GENERAL CONSIDERATIONS

155. The principle of equal rights and self-determination of peoples is of especial importance among the principles of international law concerning friendly relations and co-operation among States, because its application is essential to the existence of a community of nations in which respect for the other principles can be guaranteed. It may be rightly regarded, in accordance with the Charter of the United Nations, as the most important of the principles of international law concerning friendly relations and co-operation among States. It cannot be subordinated to any other principle, because it is an essential component of contemporary international law. This principle underlies all law and all justice; it is based on the right to collective free expression. It also underlies the fundamental rights of States, such as the right to sovereignty or to independence.

156. Moreover the principle is not only the foundation of international relations but also the basis of other principles, such as the equality of States, non-intervention and, to some extent, the prohibition of the use of force.

157. In the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the General Assembly declared that "In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles". Consequently, there is a close link between the principle of equal rights and self-determination of peoples and the other principles of international law concerning friendly relations and co-operation among States. The first principle is to be interpreted in the context of the other principles.

2. FULFILMENT IN GOOD FAITH OF INTERNATIONAL OBLIGATIONS

158. Application of the principle of equal rights and self-determination of peoples is required by the principle of fulfilment in good faith of the obligations assumed by States. This latter principle is the corner-stone of the whole edifice of contemporary international law, and its applica-

tion is a vital prerequisite for the establishment of mutual trust between States. The observance of this principle should make it possible to establish international relations on a basis of mutual respect—a particular necessity in the world of today.

3. THE PRINCIPLE OF INTERNATIONAL CO-OPERATION

159. In the process of applying the principle of equal rights and self-determination of peoples, great importance attaches to the principle of international co-operation, for at the present time international co-operation is incompatible with any form of subjection or of pressure exerted by the strong on the weak. Such co-operation should therefore be based on the sovereign equality of States and on the equal rights and self-determination of peoples. Consequently, in the process of co-operation between States, reciprocity of advantages, non-interference in the domestic affairs of States and the absence of discrimination should be respected. The concept of international co-operation is one of the fundamental ideas of the United Nations. It appears in the Charter because the world community has come to realize that, if it is to maintain peace, the United Nations cannot rest content with playing a preventive role, but should also encourage States to co-operate with one another. Co-operation between States is a prerequisite for maintaining and strengthening international peace and security and one of the most important means of promoting peace.

160. Consequently, as stated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

"(a) To promote friendly relations and co-operation among States; and

"(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

161. However, according to the principle of the duty of States to co-operate with one another in accordance with the Charter, as developed in the same Declaration,

[...]

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

[...]

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

162. No State in the world today can live in total isolation, and even the most strenuous national efforts on the

⁹² *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No.: E.70.V.5), p. 296.

part of States acting individually would not solve the substantial economic and social problems facing the international community. Active co-operation is needed if the "conditions of stability and well-being" referred to in Article 55 of the Charter are to be created and the foundations laid for harmonious and friendly relations among States. Co-operation among States is a prerequisite for maintaining and strengthening international peace and security and one of the most important means of promoting peace.

4. SOVEREIGN EQUALITY

163. The principle of equal rights and self-determination of peoples has as its corollary another principle of international law concerning friendly relations, namely, the principle of sovereign equality of States. This latter principle is closely bound up with the struggle to attain equal rights, self-determination and independence and with the strengthening of national sovereignty. There is a close interdependence between equal rights and self-determination of peoples, on the one hand, and sovereign equality on the other, in that each of these principles affects the application of the other. The events that have occurred since the adoption of the Charter of the United Nations, which proclaims sovereign equality in Article 2, paragraph 1, have demonstrated not only the validity and great significance of the principle of sovereign equality, but also the need to develop it in close conjunction with the principle of equal rights and self-determination of peoples.

164. The principle of sovereign equality is of fundamental importance. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations stresses in its Preamble that "the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations". The principles of sovereign equality and of equal rights and self-determination of peoples underlie fundamental rights of States, such as sovereignty and independence.

165. The principle of sovereign equality is the touchstone for the relations which should exist between all the States in the world. It is the expression of the recent development of the concept of State sovereignty under the influence of the growing interdependence of States and the ever-increasing trend towards democratization in international life. In these circumstances, the concept of sovereignty has been influenced by that of equality, in the context of a new form of diplomacy based on collective security and international co-operation. If all nations were equal in size and power, the principle of the sovereign equality of States would be less important than it is. However, one of the objectives of the international community is to prevent the existing disparities, so far as possible, from creating injustices and placing States in a position of inferiority in their relations with other States.

166. Sovereign equality is of increased importance in the modern era, when many new States have attained independence and wish to take part in international relations on a footing of complete equality. Through the application of the principle of sovereign equality, international law should protect these new States and their peoples from any arbitrary action and afford them genuine equality. The principle of

sovereign equality applies whatever the inequalities in territory, population, economic power or degree of development between States. It ensures legal equality—that is to say, equality in law—for all States. In these circumstances, States should have not only equal rights and duties, but also equal capacity to exercise those rights and carry out those duties. No State, whatever its power, can claim special treatment or a derogation from this principle.

167. Sovereign equality does not mean equality in power but a *de jure* equality which applies to all States irrespective of their size, capacity, wealth, economic or military power, volume of production, social and economic structure, degree of development or geographical situation. All States, large and small, are equal before the law, and no State may claim special treatment, seek advantages on any pretext, or set out to dominate other States. Since they have equal rights and duties in international law, States should have the same scope for exercising their rights and carrying out their duties. Consequently, any discrimination designed to encroach upon the sovereign rights of States constitutes a violation of the principle of sovereign equality, because the exercise of the rights deriving from sovereign equality must not be limited or compromised for political, social, economic, geographical or any other reasons.

168. The principle of sovereign equality means legal equality; that is to say, equal rights as specified in the Preamble to the Charter, respect for which, according to Article 1, paragraph 2, forms the basis for friendly relations among nations. Unfortunately, equality *de jure* is not always accompanied by equality *de facto*, but States, both individually and collectively, should strive to reduce and eliminate *de facto* inequalities through economic, technical, scientific and cultural co-operation and, above all, through political co-operation based on good will and a sense of fairness.

169. In virtue of the principle of equal rights and self-determination of peoples on the one hand, and the principle of sovereign equality on the other, there is a duty to respect the personality of States. The personality and other essential attributes of the State, such as territorial integrity and political independence, are inviolable. Consequently the State has the right to ensure its self-preservation and its own prosperity, together with the preservation and prosperity of its constituent peoples, and to organize itself. Under international law, the sole restriction on the exercise of these rights is the exercise of the rights of other States.

170. Sovereign equality implies the right of every State to establish its own political, social and economic structure, without interference or intimidation from outside, in the best interests of its inhabitants; that is to say, in accordance with the right of its people to self-determination. The independence of the State implies an independent domestic policy; in other words, independence in political, economic, social and cultural organization.

171. The jurisdiction of States within their frontiers is exercised equally and exclusively over all inhabitants, nationals and aliens alike, and over the whole territory. The principle of sovereign equality on the one hand, and the principle of equal rights and self-determination of peoples on the other, forbid any encroachment upon the authority of the State in these matters. Moreover that authority, which derives from the equality of rights under modern international law, has been recognized as vesting not only in States, but also in nations which are approaching indepen-

dence. Consequently, territories under colonial domination or foreign occupation are not regarded as forming part of the territory of the colonial Power. Similarly, in virtue of the same principles, it has been recognized that any State has the right to require the withdrawal of foreign troops or foreign military bases from its territory.

172. It is the duty of all States to refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another country. Such behaviour is incompatible with the purposes and principles of the Charter, as is pointed out in the Declaration on the Granting of Independence to Colonial Countries and Peoples.

173. The principle of equal rights and self-determination, as laid down in the Charter of the United Nations, does not grant an unlimited right of secession to populations living in the territory of an independent sovereign State, and such a right cannot be regarded as a provision of *lex lata*. A right of secession supported or encouraged by foreign States would clearly be in glaring contradiction with the respect for territorial integrity on which the principle of sovereign equality of States is based. It would be dangerous to recognize in international law a general and unlimited right of secession, for the rights of a population living in the territory of a given State are governed by the national constitutional law of that State. The right of secession unquestionably exists, however, in a special, but very important case: that of peoples, territories and entities subjugated in violation of international law. In such cases, the peoples concerned have the right to regain their freedom and constitute themselves independent sovereign States. Moreover, the international community is mature enough now to be able to distinguish between genuine self-determination and self-determination used to disguise an act of secession.

174. A State should refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State. In this connexion, paragraph 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) makes it clear that the principle of equal rights and self-determination is not to be applied to parts of the territory of a sovereign State. Such a provision is needed in order to prevent the principle from being applied in favour of secessionist movements in independent States.

175. The principle of sovereign equality imposes on States the duty of respecting the institutions of other States and not impeding their progress.

176. Territorial sovereignty has as its corollary the right of States—a right which is another aspect of the principle under consideration—freely to dispose of their natural wealth and resources. The recognition of this right is one of the major legal advances since the adoption of the Charter of the United Nations. By virtue of this right, any State may reintegrate natural wealth and resources into the national assets and use them in the interests of its people. No rule of international law and no treaty can be invoked to justify refusal to implement the right of a State freely to dispose of the wealth to be found within the boundaries of its territory, for a State would no longer be sovereign if it were not the master of its resources. Furthermore, the economic aspect of the principle of sovereign equality cannot

be separated from its political and legal aspects, for economic independence is one of the main guarantees of full and effective exercise of a State's sovereignty. The right of free disposal is of vital importance to developing countries, for they are striving to overcome obstacles that dangerously limit their potential for economic expansion and for raising the level of living of their population. This right is particularly important to peoples recently freed from colonial domination. The developed countries are bound to do everything in their power, in particular by fully respecting the principle of the sovereignty of every State, to assist the developing countries in bridging the gap between the two groups of countries.

177. At the international level, State sovereignty and self-determination are manifested by the independence of States in foreign policy. Every State has the right to take part in solving international problems and in formulating and amending the rules of international law, to join international organizations and to become a party to multilateral treaties of interest to it. This is an important consideration.

178. Since the modern world forms a single international community, international law is universal in character. The old rules of international law must be adapted to meet the needs of the modern community of States, or be replaced by new rules. The new States have the right to play their part in this process. Any attempt to frustrate the achievement of universality in international life—such as refusal to recognize newly independent States, or action to prevent them from exercising their rights as sovereign subjects of international law—is incompatible with respect for the principle of the sovereignty and rights of other States. Actions of this kind constitute a form of discrimination and are thus contrary to the principle of equality. To exclude particular States from participation in the life of the international community of nations would be tantamount to denying the universal character of the principle that States are equal in law and enjoy the rights inherent in full, sovereignty. In order to ensure that international law is universal, it is essential that each State should be guaranteed the right to play its due part in the international community. This right is a necessary consequence of the unanimously accepted principle that States are juridically equal. Every State enjoys the rights inherent in full sovereignty and each State has the duty to respect the personality of other States.

5. NON-INTERVENTION

179. There is another principle of international law concerning friendly relations and co-operation among States which ought also to be linked to the principle of equal rights and self-determination of peoples: namely, the principle of non-intervention. In the first place, non-intervention should not be used to cover up violations of self-determination; in the second place, it should protect States and peoples struggling for their independence. Acts of intervention are thus violations of the principle of equal rights and self-determination of peoples. Intervention, by violating the fundamental rights of the State, encroaches upon that State's sovereignty and independence.

180. The right of peoples to self-determination, is simply the transposition of the concept of human rights to the

collective level, and the international community has generally accepted the idea that the principle of non-intervention does not apply in a case of violation of those rights. In this connexion mention may be made of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (General Assembly resolution 2131 (XX) of 21 December 1965).

181. The principle of self-determination should not be used to disguise direct intervention in the form of support for ethnic groups living in neighbouring countries. The subversive intrigues and indirect intervention which the principle of self-determination has sometimes been used to camouflage are also to be condemned; such activities not only run counter to the principles of the Charter of the United Nations and to the principle of the solidarity of peoples, but also constitute a threat to international peace and security.

182. Since the principle of equal rights and self-determination of peoples implies that of non-intervention, the latter principle prohibits any action which runs counter to self-determination.

183. The principle of non-intervention as stated, in particular, in Article 2, paragraph 7 of the Charter, has been invoked many times against the interests of colonial peoples struggling for independence. However, that principle ought not to impede such peoples' self-determination. Furthermore, it should protect the sovereignty and independent development of new States against all outside interference. No intimidation, meddling or intervention should hamper a people in its self-determination or, in particular, in exercising its right to pursue a constructive and independent policy in order to secure and maintain its sovereignty.

184. In the Declaration adopted by the General Assembly; "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty" (resolution 2131 (XX)), it is stated in paragraph 3 that:

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

185. One of the new developments since the Second World War is the recognition of the legal importance of the concept of a "people"—a recognition which is due to the sanction given by the Charter of the United Nations to the principle of self-determination of peoples. The struggle against the colonial yoke should therefore be considered legitimate. Since the Declaration contained in resolution 2131 (XX), to which reference was made in the preceding paragraph, took account of that new development, it was natural that one of its paragraphs (para.6) should contain the following provision:

All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of social discrimination and colonialism in all its forms and manifestations.

The General Assembly thus opened the way to the progressive development of the traditional idea of non-intervention. Furthermore, this principle is implicit in Article 2, paragraph 4 and 7 of the Charter of the United Nations.

186. The current importance of the principle of non-intervention in domestic affairs and its connexion with the

principle of equal rights and self-determination of peoples were emphasized in the above-mentioned Declaration, which confirmed that the General Assembly was:

Mindful that violation of the principle of non-intervention poses a threat to the independence, freedom and normal political, economic, social and cultural development of countries, particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace, [and]

Fully aware of the imperative need to create appropriate conditions which would enable all States, and in particular the developing countries, to choose without duress or coercion their own political, economic and social institutions.

187. Furthermore, in its Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)), the General Assembly expressed the conviction that:

[...] the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security.

188. The principle of non-intervention in matters which are within the domestic jurisdiction of a State, like the principle of equal rights and self-determination of peoples and the principle of sovereign equality of States, is designed to guarantee States the freedom, in matters of development, to follow the course which they consider to serve their fundamental interests. These principles reflect the need felt by every people to be the sole master of its fate. Respect for these principles guarantees the right of all peoples to achieve their aspirations and to make their full contribution to the heritage of civilization. Consequently, acceptance of and strict respect for the principle of non-intervention are essential features of any system for the protection of small States, especially those which have recently freed themselves from colonial domination. From this standpoint, the principle of non-intervention can be seen as the complement of the principle of equal rights and self-determination of peoples. Moreover, the principle of non-intervention is of importance to all States, since it guarantees them the enjoyment of their rights as recognized by international law.

189. The principle of non-intervention demands recognition of the inalienable right of every people, whether large or small, to decide its own fate, freely to choose its own form of political, economic and social development and its own way of life in keeping with its national needs and aspirations, and to affirm its national identity without interference or pressure from outside. With the entrenchment and development of the principle of self-determination, the principle of non-intervention has taken on special importance, for the disintegration of the colonial system and the accession of many new States to independence have increased the need to protect the sovereignty and independent development of those States from all outside interference.

190. The principle of non-intervention simply safeguards the freedom of choice without which a State and an independent people cannot exist as such—a freedom often symbolized by the expression "domestic jurisdiction" of a State. This freedom has both internal and external aspects, and consists principally in the liberty of the State to choose its own political, social, economic and legal system (subject, of course, to respect for human rights and fundamental

freedoms) and to decide whether or not to maintain diplomatic relations with another State, whether or not to conclude agreements, and whether or not to join regional or international organizations. If freedom of choice were confined to essentials, it could be said that in principle the State should be protected against any action by another State designed to impose a particular choice on it.

191. In virtue of the principle of non-intervention, activities directed against a State's political, economic and social system and the imposition of, or the attempt to impose, a specific form of organization or government upon a State are prohibited. Any interference designed to encroach upon the right of a State to determine its own political, social or economic development may set up international tension likely to endanger peace. Consequently, any external pressure directed against a State's right freely to choose a particular social system or political régime should be prohibited outright. Thus not only armed intervention is prohibited, but also any form of direct or indirect intervention in the internal or external affairs of States, including political and economic intervention, and also political and economic pressure calculated to prevent peoples from choosing their own social system or from taking, in their own country, economic measures in their own interests. In virtue of the principle of non-intervention, "measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind" (General Assembly resolution 2131 (XX), paragraph 2) are prohibited. Among such measures may be mentioned, for example, measures of economic pressure designed to influence the policy of another country or to obtain control of essential sectors of its national economy. The economic dependence of the former colonial countries on the metropolitan Powers enables the latter to bring political pressure to bear on them. Aid and technical assistance can serve to cloak interference in the domestic affairs of other States. Their use for that purpose would constitute a form of intervention.

192. The principle of non-intervention also prohibits any activity designed to encroach upon the personality, sovereign equality or rights enjoyed by States under international law, or upon their integrity or territorial inviolability. This prohibition of the use of force is imposed by Article 2, paragraph 4, of the Charter and implies that States have a right to political independence and territorial integrity. Any action, demonstration or attempt directed against the integrity or territorial inviolability of a State not only violates its sovereignty, but prejudices peaceful relations between States. Once the right of a State to political independence and territorial integrity is recognized, the conditions under which the State can exercise that right must be established. One way of doing this is to impose upon States the obligation to respect the rights of other States under international law. In this context, mention must also be made of the right of every State to develop freely; the purpose is to ensure that every State may freely enjoy all its rights as recognized by international law.

193. Since the concept of the external jurisdiction of the State is an essential feature of any definition of the State, it follows that any intervention in the foreign as well as the domestic affairs of States is prohibited, for external independence is as much an attribute of sovereignty as internal independence. Certain forms of interference in the foreign

affairs of States and peoples may be equivalent to direct or indirect intervention in domestic affairs.

194. Lastly, the principle of non-intervention further prohibits any armed intervention against a State or a people, any action to organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, and interference in any other form. This conclusion is of special importance, because indirect intervention presents the greater danger for developing countries. While these countries have to concentrate all their energies on development, their efforts are sometimes counteracted by foreign intervention.

6. NON-USE OF FORCE

195. Through the principle of non-intervention, the principle of equal rights and self-determination of peoples is linked to the principle of non-resort to the threat or use of force. The last-mentioned principle is the corner-stone of peaceful relations between States. It is also an essential component of the system established by the Charter of the United Nations. In the Charter, the peoples of the United Nations affirmed that they were determined "to save succeeding generations from the scourge of war" and "to unite [their] strength to maintain international peace and security". However, as long as some States are stronger than others, it is essential to protect the weak against the misuse of force by the strong, and that is one of the purposes of the rule prohibiting the use of force in international relations. This principle offers a means of protection against the misuse of force by preventing conflicts and guaranteeing complete equality of all States. It is therefore of special importance for small States, for developing countries, for States which have just attained independence, and for peoples all over the world.

196. It will be noted in this connexion that in its resolution 2160 (XXI) entitled "Strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination" adopted by a very large majority on 30 November 1966, the General Assembly categorically proclaims the illegality of the threat or use of force and stresses the need to observe that principle.

197. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), recalls "the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State" and considers it "essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations".

198. It should be noted that the expression "against the territorial integrity or political independence of any State", which also appears in Article 2, paragraph 4, of the Charter of the United Nations, was added at the San Francisco Conference of 1945, in order to guarantee the territorial integrity and political independence of small and weak States and to prevent a State from using force against another on the pretext that it had no territorial or political

designs, but was simply trying to maintain the established constitutional order or to protect a minority. When force is used, it is directed against an international legal entity and in particular against its political organization, its population and its territory.

199. Aggression—the use or threat of force—is consequently a violation not only of the principle of non-use of force, but also of the principle of equal rights and self-determination of peoples. A threat of force which infringes these principles may be direct or indirect. It may be expressed in words, in actions such as the concentration of troops in frontier areas, or in a partial or complete severance of economic or other relations. It tends to instil fear in the State and people concerned, to intimidate them and thus to compel them to change their policy. The use of force against another State may take various forms: for instance, actions conducted by regular or irregular forces, by forces of volunteers or by armed bands; acts of reprisal; invasion; or pressure or coercion of various kinds.

200. The threat or use of force cannot have as a legal consequence military occupation or territorial gain. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations provides that “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”. Non-recognition of territorial conquests is a general principle of law within the meaning of Article 38 of the Statute of the International Court of Justice, for it is embodied in many important international conventions and in other United Nations instruments, in particular the Declaration on the Strengthening of International Security (General Assembly resolution 2734 (XXV)). It can also be considered to be a corollary to the rule laid down in Article 2, paragraph 4, of the Charter of the United Nations prohibiting the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. Non-recognition of territorial conquests is the result of a legal and political assessment which every State is entitled to make of a given situation and on which it can base its conduct. However, if in certain cases the legal assessment of the situation should be made by the Security Council or the General Assembly, and if that organ should conclude that the situation had been created by the threat or wrongful use of force, Member States would be under an obligation not to recognize that situation.

201. The non-recognition of territorial acquisitions made by force is not merely the legal and necessary consequence of the inviolability of the territory of a State. Non-recognition of such situations protects small States which, through coercive measures, have been arbitrarily deprived of parts of their national territory. Territorial disputes cannot be resolved by force, and non-recognition of territorial acquisitions promotes the peaceful settlement of such disputes.

202. Territorial acquisitions or other advantages gained through the threat or wrongful use of force cannot have legal effect, because international law cannot confer legality upon the consequences of wrongful acts incompatible with the Charter. In such cases, there should be full restitution. The traditional doctrine of acquisition of legal title by conquest has been rejected as anachronistic and contrary to the Charter of the United Nations.

203. Colonial domination and oppression, whatever their origin, clearly constitute aggression against the peoples concerned. Consequently, it is not legitimate to claim that the territory of a colony, or territory conquered or acquired by force or by the threat of force, forms an integral part of the territory of the State which administers it, and on that ground to deny independence to the people of such territory.

204. In the words of the Declaration on Principles of International law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Every State has the duty to refrain from any forcible action which deprives peoples referred to [...] in the elaboration of the [...] principle [of equal rights and self-determination] of their right to self-determination and freedom and independence.

205. Every State has the duty to refrain from any armed action and repressive measures of any kind directed against peoples fighting colonialism.

206. The Declaration on the granting of independence to colonial countries and peoples condemned all armed action or repressive measures directed against peoples exercising their right to self-determination. There can hardly be any question of peace between nations until such time as policies which disregard the inherent right of peoples to forge their own destiny are brought to an end. A number of international conflicts have been due to the use of force against dependent peoples. The immediate elimination of colonialism is essential, and any attempt to hold back the grant of independence is unlawful. Article 2, paragraph 4, of the Charter prohibits the use of armed force not only against States but also “in [...] international relations”, and thus applies to colonial Powers which try to crush communities struggling for their freedom and independence.

207. Inasmuch as colonial domination and oppression manifestly constitute aggression against the peoples concerned, the right of self-determination would be meaningless if it could not be defended against a colonial Power which sought to prevent by force the exercise of that right. In that connexion, in the above-mentioned Declaration on the granting of independence to colonial countries and peoples, the General Assembly expressly stated that the subjection of peoples to alien subjugation and domination was “contrary to the Charter of the United Nations”. It recognized the legitimacy and the international nature of the struggle of peoples under colonial domination to exercise their right to self-determination and independence. This idea has been echoed and reaffirmed in resolution VIII of 11 May 1968 of the International Conference on Human Rights⁹³ and in resolutions 2588 B (XXIV) of 15 December 1969, 2649 (XXV) of 30 November 1970, 2787 (XXVI) of 6 December 1971, 2955 (XXVII) of 12 December 1972, 3070 (XXVIII) of 30 November 1973, 3246 (XXIX) of 29 November 1974 and 3382 (XXX) of 10 November 1975 adopted by the General Assembly on “The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights”.

208. Article 2, paragraph 4, of the Charter of the United Nations prohibits the use of force not only against the

⁹³ *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968* (United Nations publication, Sales No.: E.68.XIV.2), pp. 9-10.

territorial integrity or political independence of States, but also in any other manner inconsistent with the Purposes of the United Nations. One of these purposes is to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”; this is an international obligation for all States, including colonial Powers. Consequently it is unlawful to use armed force or repressive measures, with a view to supporting or maintaining colonial domination, against peoples striving to throw off the colonial yoke in the exercise of their right to self-determination. The illegality of the use of force against such peoples derives from the fact that such action prevents the exercise of a legitimate right deriving from the principle of equal rights and self-determination of peoples; from the fact that the General Assembly has repeatedly proclaimed that the use of force to deprive dependent peoples of their inalienable rights constitutes a flagrant violation of the Charter of the United Nations and the Declaration on the granting of independence to colonial countries and peoples; and from the United Nations practice of opposing the idea that the struggle of colonial peoples for their liberation—the most important phenomenon of the modern age—should be regarded as a violation of the prohibition of the use of force. For the provisions of the Charter solemnly recognize the right of oppressed colonial peoples to defend themselves against foreign oppression; the use of force by peoples under colonial domination is not a derogation from the principle of non-use of force stated in Article 2, paragraph 4, of the Charter if it is provoked by coercive actions committed by colonial Powers in order to prevent colonial peoples from exercising their right to self-determination. The right of self-defence of peoples under colonial domination is the counterpart of the right of peoples to defend their national identity against acts of force or coercion which leave them no alternative.

209. The principle of equal rights and self-determination of peoples should serve to unite peoples on a voluntary and democratic basis, not to break up existing national entities. It is necessary to avoid any formulation of the principle which might be interpreted as widening its scope and making it applicable to peoples who already form part of an independent sovereign State. To do otherwise would be to encourage secessionist movements in sovereign States, and might serve as a pretext for endangering the national unity and territorial integrity of sovereign States. In the case of national minorities, their right to self-determination finds expression in the people's general right to self-determination, in the rights established by article 27 of the International Covenant on Civil and Political Rights and in other rights and fundamental freedoms. These rights are examined in an important study undertaken by the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled *Study of the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*,⁹⁴ prepared by Mr. Francesco Capotorti, Special Rapporteur of the Sub-Commission. The principle of self-determination should not be misused. It should not be invoked to call in question the frontiers established between States. It should not be applied in conjunction with the principle of sovereign independence in such a way as to cause the disruption of national unity and territorial integrity. Every State has the duty to refrain from any action which could have such a result.

⁹⁴ United Nations publications, Sales No. E.78.XIV.1.

D. The right of peoples to self-determination as a fundamental human right

1. GENERAL CONSIDERATIONS

210. The question of the nature of the right of peoples to self-determination arose during the debates on the inclusion of an article concerning this right in the International Covenants on Human Rights. If the right of peoples to self-determination were merely a political principle, it would have no place in such legal instruments as the Covenants. On the other hand, it would have such a place if it were regarded as a right which could be the subject of an article relating to human rights.

211. In support of the thesis that self-determination of peoples is not a right—that is to say, a human right—in the strict legal sense of the term, it was argued that Articles 1 and 55 of the Charter of the United Nations referred to the “principle” of self-determination of peoples and not to the “right” of peoples, and that the latter was in any case too complex a concept to be expressed in legal terms in an instrument having binding legal force.

212. Nevertheless, on signing the Charter, all States Members of the United Nations subscribed at the same time to the provisions concerning self-determination of peoples. Although it is true that the Charter refers to self-determination of peoples as a principle, it is obvious that any Member State which has subscribed to that principle is bound to respect the right which derives from it; accordingly, the Member States have undertaken, in Article 1 and 55 of the Charter, to respect the right of peoples to self-determination, which was written into the Charter as a means of promoting universal peace. By reaffirming this right in the International Covenants on Human Rights, the United Nations has helped to create the necessary conditions for the establishment of peaceful relations among nations and thus to strengthen international co-operation.

213. In addition, the idea was put forward that the right of peoples to self-determination should be affirmed as an individual right. It was argued that recognition of that right meant that individuals should be allowed to exercise it. In another view, the right to self-determination was a collective right and as such had no place in international covenants concerning the enjoyment of individual rights.

214. The right of peoples to self-determination is not an individual right; it is a collective right which, in the International Covenants on Human Rights, has been distinguished from other individual rights placed before them and proclaimed as a universal and perpetual right. The inclusion of an article on self-determination of peoples in the International Covenants on Human Rights has been extremely significant in the peoples' struggle to shake off the colonial yoke.

215. In referring to self-determination, all the main instruments of the United Nations—the Charter, the International Covenants on Human Rights, the Declaration on the granting of independence to colonial countries and peoples and the declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations—identify it as a right of peoples.

216. From the standpoint of the Charter of the United Nations and in the light of its inclusion in the International

Covenants on Human Rights, self-determination is seen to be a fundamental human right forming part of the legal system established by the Charter. All States have the obligation to respect and apply this fundamental right as such.

217. In the Charter, the peoples of the United Nations declared themselves determined

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

In the preambles to both International Covenants on Human Rights, namely, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, it is stated that

recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

This clause is taken from the first paragraph of the preamble to the Universal Declaration of Human Rights.

218. One of the purposes of the United Nations is:

To achieve international co-operation [...] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

219. Article 55 of the Charter of the United Nations refers to “the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations” and specifies that recognition of human rights and fundamental freedoms for all is one of the essential factors in the creation of a stable social order at both the national and the international level. In referring to the principle of equal rights and self-determination of peoples, this Article postulates that the principle can become a reality only through higher standards of living for the peoples of Member States, the solution of international problems and respect for human rights. In Article 56 of the Charter, the Member States pledge themselves “to take joint and separate action in co-operation with the Organization” for the purpose *inter alia* of developing universal respect for human rights and fundamental freedoms—an area in which public international law has made enormous progress since the entry into force of the Charter.

220. The principles of equal rights and self-determination of peoples is part of the group of human rights and fundamental freedoms. Its recognition is the ineluctable logical consequence of the recognition of human rights. They cannot be separated. Without political freedom, civil rights cannot be fully respected, and the equality of all human beings before the law cannot be ensured unless the nations to which those human beings belong are also recognized as equal. Consequently, the right of peoples to self-determination has the same universal validity as other human rights.

221. Recognition of the right of peoples to self-determination as one of the fundamental human rights, is bound up with recognition of the human dignity of peoples, for there is a connexion between the principle of equal rights and self-determination of peoples, on the one hand, and respect for fundamental human rights and justice on the other. The principle of self-determination is the natural corollary of the principle of individual freedom, and the subjection of peoples to alien domination constitutes a denial of fundamental human rights. Incidentally, it should be noted that, although great progress has been made in the liberation of nations,

fundamental freedoms are not protected in certain regions which are still under colonial régimes or in which the population is exposed to such inhuman practices as *apartheid*.

222. The right of peoples to self-determination and the other fundamental human rights have the same foundation: the recognition of human dignity. Respect for these rights contributes to the achievement of the purposes of the United Nations—the maintenance of international peace and security and the development of friendly relations and international co-operation. These rights are interrelated in the conventional law of the United Nations by the Charter and the International Covenants on Human Rights. As a result, they play a prominent part not only in conventional law, but in all United Nations activities.

223. In this connexion it should be noted that the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights proclaim that the recognition of inalienable human rights—including the right of peoples to self-determination, which is set out in article 1 of both Covenants—“is the foundation of freedom, justice and peace in the world”. The Covenants also refer to “the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms”.

224. In another important United Nations instrument, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the General Assembly stresses “the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights”.

225. Article 1 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights proclaims the right of peoples to self-determination. This right is the basis for the exercise of civil and political rights and of economic, social and cultural rights. At the same time, the exercise of these rights contributes to the realization of the right of peoples to self-determination.

226. Where States are concerned, both International Covenants on Human Rights impose obligations with regard to the realization of fundamental human rights which are important for the application of the right of peoples to self-determination. In article 2 of the International Covenant on Civil and Political Rights, each State Party undertakes “to respect and to ensure” these rights; in article 2 of the International Covenant on Economic, Social and Cultural Rights, each State Party undertakes “to take steps [...] with a view to achieving progressively the full realization” of these rights. Article 4 of the International Covenant on Civil and Political Rights provides for derogation from the obligations assumed by the States Parties:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed [...] provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Article 4 of the International Covenant on Economic, Social and Cultural Rights provides that:

The States Parties [...] recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible

with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

The provisions concerning the rights of peoples to self-determination contained in article 5 of both Covenants are similar. Article 5 of the International Covenant on Civil and Political Rights provides that:

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent. Another provision of the International Covenants with a direct bearing on the right of peoples to self-determination is that contained in article 25 of the International Covenant on Economic, Social and Cultural Rights and in article 47 of the International Covenant on Civil and Political Rights, which read:

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

2. IMPORTANCE OF THE UNIVERSAL REALIZATION OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND OF THE SPEEDY GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES FOR THE EFFECTIVE GUARANTEE AND OBSERVANCE OF HUMAN RIGHTS

227. There is an obvious relationship between equal rights and self-determination of peoples, on the one hand, and respect for human rights and fundamental freedoms, on the other. This relationship is stated explicitly in Article 55 of the Charter of the United Nations, which provides that:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote [...] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

228. Although equal rights and the right of self-determination of peoples constitute a collective right, it is nevertheless of concern to every individual, since deprivation of it would entail a loss of individual rights. The right of peoples to self-determination is a fundamental right, without which other rights cannot be fully enjoyed. It is not only a principle, but the most important subjective right among human rights. It is also a collective right possessed by all nations and all peoples; peoples and nations and, *a fortiori*, the individuals composing them will not be free if they do not enjoy it. Consequently, enjoyment of this right is a prerequisite for the exercise of all individual rights and freedoms. That is why it is given first place in the International Covenants on Human Rights. States therefore have the obligation to respect the right of peoples under their jurisdiction freely to choose their political status and freely to pursue their economic, social and cultural development without discrimination on grounds of race, religion or colour. This right also implies that Governments owe their existence and their powers to the consent of their people, since the will of the people should be the basis of the Government's author-

ity. It is with this intention that the right of peoples to self-determination has been written into international instruments, not in order to encourage secessionist or irredentist movements. By virtue of this principle it is necessary to avoid any act likely to prejudice the national unity and territorial integrity of a State—particularly a State which respects the principle of equal rights and self-determination of peoples and has a Government representative of the population as a whole.

229. The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights has been stressed in resolution VIII of the International Conference on Human Rights held at Teheran in 1968, and in resolutions 2588 B (XXIV), 2649 (XXV), 2787 (XXVI), 2955 (XXVII), 3070 (XXVIII), 3246 (XXIX) and 3382 (XXX) adopted by the General Assembly of the United Nations between 1969 and 1975. In these resolutions, the General Assembly has reaffirmed the right of all peoples under a colonial and alien régime to liberation and self-determination, called upon all Governments concerned to apply the relevant resolutions of the United Nations on self-determination, and called upon all States and international organizations to render appropriate assistance to peoples struggling for their freedom and independence. In resolution 32/14 of 7 November 1977, on the same subject, the General Assembly reaffirmed:

the importance of the universal realization of the right of peoples to self-determination, national sovereignty and territorial integrity and of the speedy granting of independence to colonial countries and peoples as imperatives for the enjoyment of human rights.

It expressed its indignation at:

the continued violations of the human rights of the peoples still under colonial and foreign domination and alien subjugation, the continuation of the illegal occupation of Namibia and South Africa's attempts to dismember its territory, the perpetuation of the racist minority régimes in Zimbabwe and South Africa and the denial to the Palestinian people of their inalienable national rights.

If called upon all States:

to implement fully and faithfully the resolutions of the United Nations regarding the exercise of the right to self-determination by peoples under colonial and alien domination, and reaffirmed:

the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle.

230. The principle of equal rights and self-determination of peoples has played a very important part in the history of the United Nations and has been invoked more often than any other Charter principle of international law, for it profoundly affects the lives of peoples. In the history of the United Nations so far, it has been the moral, political and legal basis for more intensive development of international relations in the direction of eliminating any idea of inequality between States and any subjection of one people by another. It has become one of the guiding concepts of the contemporary world and a powerful spur to political action in a great many situations. The notion of equality and self-determination meets the most heartfelt aspirations of all peoples subjected to colonial or alien subjugation. The struggle against the domination and exploitation of one people by another, against hostility between nations and against the causes of such domination and exploitation—a

struggle which is helping to lay the objective foundations for *rapprochement* and co-operation between States and peoples and for reconciliation of the national interests of different States and peoples — is the fundamental characteristic of the contemporary world.

231. In this context, the principle of equal rights and self-determination of peoples has played a particularly important part in the peoples' struggle against the colonial yoke. In the modern world it has been applied to the problem of decolonization, to which the United Nations has paid special attention, as witness General Assembly resolution 1514 (XV) and the work of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The struggle against colonialism is the most important field of application of the principle of equal rights and self-determination of peoples. The United Nations has contributed substantially to the application of that principle by giving active political aid to peoples fighting for their independence and by recognizing their right to self-determination. In this way the United Nations has associated itself with the campaign for the elimination of colonialism in all parts of the world.

232. In our era of decolonization and the elimination of colonialism, the principle of equal rights and self-determination of peoples is of vital importance, for it represents the essential objective of peoples and countries struggling against colonial domination and exploitation — an objective for which those subject peoples have made enormous sacrifices. For peoples which are still subjected to colonial domination and which aspire to equality, sovereignty, independence, political self-determination, the integrity of their national territory and the right to establish and strengthen their national State without outside intervention, this principle is the goal to be attained. Moreover, all the peoples which have won their independence at great sacrifice have also resolved to do everything necessary to strengthen that independence and to defend their right to decide their own future. For these peoples, the principle is important because it entails the prohibition of any attack from outside against what they have been able to achieve through the exercise of the right of self-determination. Independence is an essential factor in political, economic and social development. Therefore, throughout the world, the will to attain independence and the desire to be masters of their fate are mobilizing peoples against colonialism and against any imperialist policy of interference in the domestic affairs of States and peoples.

233. To respect the independence of peoples, their existence and their personality is also to respect their sovereignty, which is the essential factor in the exercise of the right of peoples to be independent, that is to say, to determine their own future and to organize their national life as they see fit. Respect for the sovereign rights of nations and peoples makes it possible to establish international relations on a basis of friendship and co-operation. Conversely, violation of the principle of equal rights and self-determination of peoples jeopardizes the very existence of those peoples; it prejudices international legality and represents a threat to world peace. Thus the principle of equal rights and self-determination of peoples is a fundamental component of the international legal and political order.

234. In our era of the elimination of colonialism, the principle of equal rights and self-determination of peoples

stands behind the greatest liberation movement the world has ever seen. During this period of struggle to establish new international relations and to install a new international order, the principle of equal rights and self-determination of peoples holds out great hopes to the peoples and creates genuine international solidarity.

235. Nevertheless, although the principle of equal rights and self-determination of peoples has been embodied in the Charter and has been reaffirmed and developed in several fundamental instruments of the United Nations and in other instruments concluded between States, it is continually being violated in various parts of the world. The international scene affords many examples of denial of the right of peoples to self-determination. This situation represents a threat to international peace, security and co-operation. Whatever the way in which the principle of equal rights and self-determination of peoples is violated, it is the duty of all States and of the international community as a whole to ensure strict respect for this principle.

236. Although a great many countries have attained independence since the adoption of the Charter of the United Nations, there are still territories under colonial or racial domination, and national liberation movements are still being suppressed. Attempts are being made in various ways to prevent peoples from living in freedom and independence. Peoples are still being drawn into political and military groupings, or subjected to attempts to keep them in such groupings. Military bases are still being established or maintained in their national territories, and unequal treaties are still being concluded. The various military, economic and cultural pressures that are still being brought to bear in order to perpetuate in various ways the domination of certain States over foreign peoples are as dangerous as traditional colonialism. The subtle restrictions imposed on the exercise of the rights of small and developing countries are creating an alarming situation for these countries. In this situation all States have the duty to lend their support to the movements of peoples struggling against colonial or any other domination, and to peoples and States seeking to determine their own destiny.

3. ILLEGALITY OF THE SUBJECTION OF PEOPLES TO ALIEN SUBJUGATION, DOMINATION AND EXPLOITATION

237. In the Declaration on the granting of independence to colonial countries and peoples, the United Nations General Assembly declared that

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

This principle, thus first proclaimed, was taken up again in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; in the General Assembly resolutions adopted between 1961 and 1975 concerning the implementation of the Declaration on the granting of independence to colonial countries and peoples⁹⁵ in resolution VIII of the International Conference on

⁹⁵ Resolutions 1654 (XVI), 1810 (XVII), 1956 (XVIII), 2105 (XX), 2189 (XXI), 2311 (XXII), 2326 (XXII), 2426 (XXIII), 2465 (XXIII), 2548 (XXIV), 2555 (XXIV), 2621 (XXV), 2704 (XXV), 2708 (XXV), 2878 (XXVI), 2908 (XXVII), 3118 (XXVIII), 3163 (XXVIII), 3300 (XXIX), 3328 (XXIX), 3421 (XXX), 3481 (XXX) and 3482 (XXX).

Human Rights held at Teheran in 1968; and in the General Assembly resolutions concerning the "Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights".⁹⁶

238. Subjugation constitutes a violation of the idea of freedom which underlies the right of peoples to self-determination and other fundamental human rights. It will be noted that the Universal Declaration of Human Rights and the International Covenants on Human Rights contain a condemnation of slavery and all similar inhuman or degrading practices which represent a negation of the rights and freedoms of men and women, in particular the right to life, to security of person, to freedom in general, to participation in public life, etc.

239. Before the adoption by the United Nations of international instruments relating to human rights and even before the entry into force of the Charter of the United Nations, it was generally recognized that the subjection of peoples to a foreign yoke constituted a denial of fundamental human rights and that it was necessary to promote the principle of self-determination in the interests of international peace and co-operation, of the protection of human rights and, in particular, of the inalienable right of peoples to govern themselves in freedom.

240. The principle of equal rights and self-determination of peoples is the logical and natural consequence of the principle of individual freedom and, from this point of view, the subjection of a people to colonial or foreign domination constitutes a negation of fundamental human rights. Therefore, colonization, neo-colonialism and racial discrimination, their main corollary, are now recognized as illegal by the United Nations and by international law. In many cases, racial discrimination is a legacy of colonialism, and other inhuman policies such as *apartheid* are condemned along with it. The illegality of colonialism, alien exploitation, racial discrimination and *apartheid* has become a generally accepted rule of contemporary international law, deriving from the Charter. This is borne out by the fact that several United Nations organs have been established to combat these harmful practices and to promote self-determination.

241. Colonialism, alien domination, racial discrimination and *apartheid* are incompatible and irreconcilable with the right of peoples to self-determination. This right calls for the elimination of colonialism, alien domination, racial discrimination and *apartheid*. In this context, the solution to the problem of human rights lies in accession to independence.

242. Colonialism and other forms of subjugation are not only incompatible with human dignity; they are also calculated to jeopardize peaceful relations between nations. They are an obstacle to international peace and co-operation and represent a breach of the express obligation which international law lays on every State to respect the right of peoples to self-determination. Any form of alien oppression is incompatible with the right of peoples to decide their own fate, and irreconcilable with their independence and equality. In resolution 2105 (XX) of 20 December 1965 concerning the implementation of the Declaration on the granting

of independence to colonial countries and peoples, the General Assembly declared itself

Fully aware that the continuation of colonial rule and the practice of *apartheid* as well as all forms of racial discrimination threaten international peace and security and constitute a crime against humanity.

This declaration has since been repeated in several resolutions—a fact which reflects the growing concern of the United Nations at the persistence of these phenomena. In the same spirit, the General Assembly has intensified its efforts to obtain the active support of the Security Council and to persuade the Council to intervene in order to combat these illegal acts which endanger peace. In addition, the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and the General Assembly have on several occasions drawn the Security Council's attention to the serious situation resulting from failure to implement the Declaration on the granting of independence to colonial countries and peoples in particular cases. They have recommended appropriate coercive measures to secure the implementation of United Nations resolutions.

243. Whatever attempts may be made to justify it, colonialism—including neo-colonialism—in all its forms and practices is, by its very nature, a negation of the right of peoples to self-determination and of all other fundamental human rights and freedoms, and runs counter to the principles and purposes of the Charter of the United Nations. In the Declaration on the granting of independence to colonial countries and peoples, the General Assembly recognized "that the peoples of the world ardently desire the end of colonialism in all its manifestations;" expressed the conviction "that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace"; and expressed the belief "that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith".

244. With regard to the elimination of colonialism, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations imposes on States

[...] the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

[...]

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned.

The Declaration adds that:

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

245. In order to contribute to the elimination of colonialism and to the efforts being made both by States and by international organizations, the General Assembly has adopted a large number of resolutions concerning the imple-

⁹⁶ Resolutions 2588 B (XXIV), 2649 (XXV), 2787 (XXVI), 2955 (XXVII), 3070 (XXVIII), 3246 (XXIX) and 3382 (XXX).

mentation of the Declaration on the granting of independence to colonial countries and peoples.

246. With regard to the implementation of United Nations resolutions on decolonization, the General Assembly, in the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations (resolution 2627 (XXV) of 24 October 1970), declared:

We acclaim the role of the United Nations in the past twenty-five years in the process of the liberation of peoples of colonial, Trust and other Non-Self-Governing Territories. As a result of this welcome development, the number of sovereign States in the Organization has been greatly increased and colonial empires have virtually disappeared. Despite these achievements, many Territories and peoples continue to be denied their right to self-determination and independence [...] We reaffirm the inalienable right of all colonial peoples to self-determination, freedom and independence and condemn all actions which deprive any people of these rights.

At the same session the General Assembly adopted, in resolution 2621 (XXV) of 12 October 1970, the "Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples".

247. At its thirtieth session, in resolution 3481 (XXX) of 11 December 1975, adopted on the occasion of the fifteenth anniversary of the adoption of the Declaration on the granting of independence to colonial countries and peoples, the General Assembly observed that:

[...] the principles enshrined in the Declaration have continued to serve as an important source of encouragement and inspiration to the peoples under colonial and alien domination in their struggle to achieve their inalienable right [...]

and that

since the adoption of the Declaration, a number of Territories had achieved self-government and independence and many have since joined the United Nations system of organizations,

and welcomed

the positive developments towards full internal self-government and independence in the remaining colonial Territories.

It declared that:

[...] the continuation of colonialism in all its forms and manifestations—including racism, *apartheid* and the activities of foreign economic and other interests which exploit colonial peoples, as well as the waging of colonial wars to suppress the national liberation movements of the colonial Territories in Africa—is incompatible with the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples and poses a serious threat to international peace and security;

and affirmed

[...] its determination to continue to take all necessary steps with a view to the complete and speedy eradication of colonialism and to the faithful and strict observance by all States of the relevant provisions of the Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the guiding principles of the Universal Declaration of Human Rights.

248. The objective of complete decolonization has not been universally achieved, because various means have been used, in defiance of the Declaration on the granting of independence to colonial countries and peoples, to prevent peoples which are still dependent from exercising their fundamental right to self-determination. The various cultural, military and economic pressures brought to bear by certain States in order to perpetuate their domination over foreign peoples are often as dangerous as traditional colonialism.

249. Racial discrimination and *apartheid*, being based on doctrines of exclusion on grounds of racial difference or

ethnic or religious inferiority, all of which are scientifically false, morally reprehensible and socially unjust, constitute an affront to human conscience and dignity, a total negation of the purposes and principles of the Charter of the United Nations and a crime against humanity.

250. In the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (resolution 1904 (XVIII), of 20 November 1963), the General Assembly proclaimed that:

Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

The same ideas underlie the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in its resolution 2106 A (XX) of 21 December 1965; the Discrimination Convention—No. III—(Employment and Occupation),⁹⁷ adopted by the General Conference of the International Labour Organisation on 25 June 1958; the Convention against Discrimination in Education, adopted by the UNESCO General Conference on 14 December 1960;⁹⁸ and the relevant articles of the two International Covenants on Human Rights prohibiting discrimination. These instruments together constitute the expression of conventional international law concerning the struggle against racial discrimination in various fields. They lay upon States and the United Nations an obligation to make every effort at the national and international levels to ensure the speedy and complete elimination of all forms of racial discrimination. By resolution 2919 (XXVII) of 15 November 1972, the General Assembly launched the Decade for Action to Combat Racism and Racial Discrimination. The causes of racial discrimination, its various aspects and the measures by which these evils can be combated are analysed in the most important work produced by the United Nations in this field: *Racial Discrimination*,⁹⁹ a study by Mr. Hernán Santa Cruz, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission on Prevention of Discrimination and Protection of Minorities also produced another important study entitled "Study of the Problem of Discrimination against Indigenous Populations"¹⁰⁰ which comprises the reports submitted by Mr. José R. Martínez Cobo, Special Rapporteur.

251. In the matter of *apartheid*, the United Nations General Assembly, in its resolution 3068 (XXVIII) of 30 November 1973, adopted and opened for signature and ratification by States, the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. In this Convention, the States Parties observe that:

in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction,

⁹⁷ ILO, *Conventions and Recommendations, 1919-1966*, Geneva, International Labour Office, 1966, p. 969.

⁹⁸ United Nations, *Treaty Series*, vol. 429, p. 94.

⁹⁹ United Nations publication, Sales No. E.76.XIV.2.

¹⁰⁰ E/CN.4.Sub.2/L.684 and L.707.

and that:

in the Convention on the Prevention and Punishment of the Crime of Genocide, certain acts which may also be qualified as acts of *apartheid* constitute a crime under international law.

The States Parties go on to declare that:

apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of *apartheid* and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.

The States parties to the Convention

declare criminal those organizations, institutions and individuals committing the crime of *apartheid*.

The Convention defines “the crime of *apartheid*”, which includes policies and practices of racial segregation and discrimination as practised in southern Africa, as meaning

inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.

252. All States are under an obligation to co-operate with the United Nations and to assist it in carrying out its task of putting an end to colonialism, racial alien domination and *apartheid*. All States are required to refrain from giving assistance of any kind to colonial and racist régimes. The adverse consequences of such assistance have been shown in a study by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled: *Assistance to Racist Regimes in Southern Africa: impact on the enjoyment of Human Rights*,¹⁰¹ prepared by Mr. Ahmed M. Khalifa, Special Rapporteur of the Sub-Commission. It is unlawful to resort to armed action or to repressive measures of any description against oppressed peoples struggling for their independence. Such use of force would constitute a crime against peace and a grave violation of the Charter of the United Nations. Peoples subjected to such domination, and hence unable to exercise the rights deriving from the principle of self-determination, are entitled to struggle. The legitimacy of their struggle has been recognized by General Assembly resolutions—in particular those concerning implementation of the Declaration on the granting of independence to colonial countries and peoples and those concerning the importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights—and by resolutions of the Security Council. Along the same lines, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations provides *inter alia* that:

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

253. Since the illegality of colonial domination, alien occupation and racial discrimination has been recognized, peoples are justified in exercising the right of self-defence when all other means have failed. Furthermore, if repression, denial of justice and violation of human rights go

unpunished, if economic interests continue to prevail over justice, and if the principle of self-determination remains disregarded, the defenders of that principle—the peoples themselves—should be allowed to defend their legitimate rights. In support of the right of self-defence it may be pointed out that the struggle of independence and national liberation movements for self-determination is not a violation of the Charter of the United Nations. Furthermore, the affirmation by the Charter of the principle of equal rights and self-determination of peoples indicates that the right of peoples to self-determination is a question of international interest and constitutes a right under international law whose application should be ensured. If peoples are not in a position to exercise this right, they should be able to call for international assistance.

254. In view of the attempts made by States and by the United Nations over the past 15 years to give practical effect to the principle of self-determination, and since the United Nations has made a substantial contribution by lending active political, moral and material support to peoples struggling for their independence against colonialism, it should be recognized that peoples struggling for their independence are entitled to receive assistance from States. Moreover, all States are under an obligation to support the efforts made by the United Nations to eliminate colonial, alien or racist régimes.

255. In this connexion, it should be noted that in resolution 3103 (XXVIII) of 12 December 1973, entitled “Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes”, the General Assembly has proclaimed that

1. The struggle of peoples under colonial and alien domination and racist régimes for the implementation of their right to self-determination and independence is legitimate and in full accordance with the principles of international law.

2. Any attempt to suppress the struggle against colonial and alien domination and racist régimes is incompatible with the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples and constitutes a threat to international peace and security.

3. The armed conflicts involving the struggle of peoples against colonial and alien domination and racist régimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions, and the legal status envisaged to apply to the combatants in the 1949 Geneva conventions and other international instruments is to apply to the persons engaged in armed struggle against colonial and alien domination and racist régimes.

4. ROLE OF THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE UNIVERSAL REALIZATION OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION

256. The universal realization of the right of peoples to self-determination is of great importance for the effective guarantee and observance of human rights; it is equally true that the promotion and protection of human rights and fundamental freedoms contribute to the implementation of the right of peoples to self-determination.

257. The guarantee and observance of the various individual human rights and freedoms contribute, each in the area of its exercise, to the realization of different aspects—

¹⁰¹ United Nations publication, Sales No. E.79.XIV.3.

political, economic, social and cultural — of the right of peoples to self-determination. Consequently, the exercise of civil and political rights is important for the realization of the right of peoples to choose their political status and the right of peoples to pursue their economic, social and cultural development. The same is true of economic, social and cultural rights. The enjoyment of individual rights must be regarded as a minimum requirement if the right of peoples to choose their political status is to be respected. Among such rights may be mentioned in particular individual freedom; the right of everyone to take part in the government of his country; freedom of speech; freedom of the press; the right of assembly; freedom of conscience; the right to a fair trial; universal adult suffrage; right of everyone to join political parties, and the freedom of all parties to participate without restriction in political life; and the absence of any pressure on, or coercion of, the population, so that it is able freely to express its opinion on its political status with the assurance that its views will be respected.

258. Certain political, economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights are more directly connected than others with the realization of the right of peoples to self-determination. This category includes, for example, the right of everyone “to take part in the government of his country, directly or through freely chosen representatives”, and to have equal access “to public service in his country”, which are proclaimed in article 21 of the Universal Declaration and in article 25 of the International Covenant on Civil and Political Rights. Article 21 of the Universal Declaration provides that:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Also of particular importance for the realization of the right of peoples to self-determination is the right of everyone “freely to participate in the cultural life of the community” and “to share in scientific advancement and its benefits”, which is proclaimed in article 27 of the Universal Declaration of Human Rights and in article 15 of the International Covenant on Economic, Social and Cultural Rights; and the right of everyone, under article 28 of the Universal Declaration of Human Rights, to “a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized”.

259. The importance of promoting and respecting human rights and freedoms for the realization of the right of peoples to self-determination is stressed in the Charter of the United Nations. Article 55 of the Charter provides that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”, with a view to “the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. Article 56 of the Charter lays on Member States an obligation “to take joint and separate action in co-operation with the Organization” for the achievement of that purpose. In the Proclamation of Teheran, the International Conference on Human Rights solemnly proclaimed that:

It is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions

of any kind such as race, colour, sex, language, religion, political or other opinions;

[...]

The primary aim of the United Nations in the sphere of human rights is the achievement by each individual of the maximum freedom and dignity.

[...]

Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.¹⁰²

The extensive action undertaken by the United Nations for the promotion and protection of human rights is making a significant contribution to the realization of the right of peoples to self-determination. A number of resolutions of the United Nations General Assembly show clearly that the Organization has made very great efforts to find means of ensuring effective enjoyment of human rights and fundamental freedoms (resolutions 2144 (XXI), 3221 (XXIX), 3222 (XXIX) and 3451 (XXX)). The General Assembly has expressed in its resolutions, in particular, its concern at the serious violations, in certain dependent countries, of the fundamental rights and freedoms proclaimed in the Universal Declaration of Human Rights. Such violations have taken the form either of discrimination on grounds of race, colour, sex, language or religion, or of denial of freedom of opinion and expression, of the right to life, liberty and security of person and of the right to be protected by independent and impartial tribunals. In its resolutions, the General Assembly has deplored the policy of plunder inflicted on peoples subjected to colonial domination, and has declared that the aim of such violations is to suppress the peoples’ legitimate struggle for independence and human dignity. It has on many occasions requested States to redouble their efforts to promote total respect for human rights and for the right to self-determination in accordance with the Charter of the United Nations, and to realize the ideals set forth in the Universal Declaration of Human Rights.

E. The beneficiaries of equal rights and self-determination

1. GENERAL CONSIDERATIONS

260. As in the case of any statement of rights and duties, a fundamental problem which arises in regard to equal rights and self-determination is that of identifying the holder of the rights and the nature of the corresponding duties. This is a matter of vital importance, both as regards the sphere of application of the principle and as regards its legal content. It may be deduced from the very statement of the principle of equal rights and self-determination that peoples, whether or not they are constituted as a State, whether or not they have attained nation status, are the holders of equal rights and of the right to self-determination. That is also clear from the preparatory work on the Charter of the United Nations. With reference to Article 1, paragraph 2, of the Charter, which states this principle, the report of Committee I of Commission I of the San Francisco Conference, contained the following observation:

¹⁰² *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968* (United Nations publication, Sales No. E.68.XIV.2), p. 4.

(4) That what is intended by paragraph 2 is to proclaim the equal rights of peoples as such, consequently their right to self-determination. Equality of rights, therefore, extends in the Charter to states, nations and peoples.¹⁰³

261. During the consideration of the first article of the Charter by the Co-ordination Committee, the meanings of the words “peoples”, “nations” and “States” were discussed. One member of the Committee objected to the use of the word “nations”, particularly when it was used in apparent differentiation from the word “peoples”. In his opinion, this seemed to introduce the right of secession. He urged that only the word “nations” should be used in that paragraph. Another representative raised a technical objection to the use of the word “nations”. He considered the use of that word juridically incorrect, because international relations were carried on between States and not between nations. Some representatives pointed out that the two words were frequently used interchangeably in the United Kingdom and the United States of America, but that in continental European usage there was a distinct difference between them. According to one representative, the word “nations” had been used advisedly because it was a broader term. He said that there would be some parties to the Charter which would not be States in the strict sense of the word. He concluded that the use of the word “States” in that paragraph would undesirably narrow the meaning. Another representative believed that the use of the word “nations” invited confusion. It was also pointed out that, if the word “nations” were used, it might be applied to any colony inhabited by a special and distinct race, which could therefore ask that it be constituted a nation.¹⁰⁴

262. At the request of the Co-ordination Committee, the secretariat prepared a memorandum containing a list of words and expressions which appeared frequently in the Charter, among them the words “nations”, “States” and “peoples”.¹⁰⁵ The following observations were made with regard to the use of these words:

The word ‘state’ is used throughout the Technical Committee texts as in the Dumbarton Oaks Proposals to indicate a definite political entity. The word ‘state’ occurs in all paragraphs dealing with the functions of the Organization, in both security and non-security fields. The word ‘state’ is also used when a distinction is being made between a member and non-member, viz., ‘Any state, whether a member of the Organization or not [...] It is believed that this usage is entirely proper, even though certain members of the Organization are technically not yet states. There appears to be no other word which could be used for this purpose.

The word ‘nation’ is used only seven times in the Technical Committee texts, for the most part in a broad and non-political sense, viz., ‘friendly relations among nations’. In this non-political usage, ‘nation’ would seem preferable to ‘state’ since the word ‘nation’ is broad and general enough to include colonies, mandates, protectorates, and quasi-states as well as states. It also has a poetical flavour that is lacking in the word ‘state’.

It, therefore, seems desirable to retain ‘nation’ in the Preamble, in Article 1, paragraph 2, and in the old Article 58 dealing with the general purposes of the Economic and Social Council. Where ‘nation’ was incorrectly used in old Article 60X, the Secretariat properly changed the word to ‘state’.

In Article 15, the Technical Committee text referred to ‘the peaceful adjustment of any situations, regardless of origin, which it deems likely to impair the general welfare of friendly relations among nations...’. The Advisory Committee of Jurists changed ‘nations’ to ‘states’. In this case the word ‘nations’ would seem

preferable in order to emphasize the idea of friendly relations among all types of political entities.

No difficulty appears to arise from the use of the word ‘peoples’ which is included in the Technical Committee texts whenever the idea of ‘all mankind’ or ‘all human beings’ is to be emphasized. The word ‘peoples’ thus occurs only in the Preamble, in Article 1, paragraph 2, and in the old Article 58, outlining the purposes of the Economic and Social Council. In both Articles 2 and 58, the word ‘peoples’ is used in connexion with the phrase ‘self-determination of peoples’. This phrase is in such common usage that no other word seems appropriate.

The question was raised in the Co-ordination Committee as to whether the juxtaposition of ‘friendly relations among nations’ and ‘self-determination of peoples’ is proper. There appears to be no difficulty in this juxtaposition since ‘nations’ is used in the sense of all political entities, states and non-states, whereas ‘peoples’ refers to groups of human beings who may, or may not, comprise states or nations.¹⁰⁶

263. A number of commentators on the Charter of the United Nations have maintained that the juxtaposition of the concepts of equal rights and self-determination of peoples shows that the Charter was addressed essentially to independent States. This argument is based on an over-literal interpretation of the text and does not truly reflect the authors’ intentions, for although the principle obviously applies to independent States, it would be idle to claim that its application should be confined within narrow limits.

264. In fact, in drafting this principle, the authors of the Charter sought to take into account the aspirations of all peoples, including those of Non-Self-Governing and Trust Territories, and the connexion between the principle of self-determination of peoples and the need to encourage respect for, and universal application of, human rights and fundamental freedoms for all.

265. Similarly, attempts have been made to distinguish between the principle of self-determination of peoples, which is referred to in Articles 1 and 55 of the Charter, and “self-government” or “independence” as referred to in Article 73, subparagraph *b*, and Article 76, subparagraph *b*. The principle of self-determination applies to sovereign States, for Articles 1 and 55 lay upon States the obligation to base their relations on “respect for the principle of equal rights and self-determination of peoples”. Under Article 73, subparagraph *b*, administering authorities are required “to develop self-government” for the peoples of Non-Self-Governing Territories, and under Article 76, subparagraph *b*, administering authorities are required to promote the development of the inhabitants of the Trust Territories towards “self-government or independence” (the word “independence” was deliberately omitted from the text of Article 73, subparagraph *b*). Care should therefore be taken not to confuse the “self-determination of peoples”, referred to in Articles 1 and 55 of the Charter, with the “self-government” referred to in Article 73, subparagraph *b*, and the “self-government or independence” referred to in Article 76, subparagraph *b*. Despite the differences in wording and context, however, the principle of self-determination and the right of peoples to self-government or independence are essentially the same. The United Nations cannot uphold the principle of self-determination of peoples under Articles 1 and 55 of the Charter without upholding the right of the peoples of Non-Self-Governing and Trust Territories to self-government or independence under Article 73, subparagraph *b*, and Article 76, subparagraph *b*, of the Charter; the converse is also true. It would be absurd to maintain that

¹⁰³ *Documents of the United Nations Conference on International Organization*, I/1/A/19 (vol. VI, p. 704).

¹⁰⁴ *Ibid.*, CO/170 (vol. XVII, p. 142).

¹⁰⁵ *Ibid.*, (*ibid.*, p. 143).

¹⁰⁶ *Ibid.*, CO/156 (vol. XVIII, pp. 657-658).

the Charter gives the peoples of Non-Self-Governing and Trust Territories the right to self-government or independence, but refuses them the right to self-determination. The right to self-determination is universal; it should be applied to all peoples and all nations.

266. The documents of the San Francisco Conference suggest that the authors of the Charter conceived the principle of equal rights and self-determination of peoples as a single norm applicable to States, nations and peoples, for States in the international meaning of the word are obviously "peoples". However, the term "peoples" applies not only to States, but also to other entities such as nations. The fact that the principle of equal rights and self-determination of peoples applies both to States and to peoples has been confirmed in many resolutions adopted on the subject by the General Assembly. Consequently, States are bound to apply the principle in their relations both with other independent States and with peoples which have not yet constituted themselves independent States.

2. PEOPLES

267. The process whereby so many peoples have been decolonized and have attained independence has helped to focus attention on peoples, whom the Charter and all the other legal instruments adopted by the United Nations designate as the direct and principal holders of equal rights and the right to self-determination. The efforts of the international community to help in liberating colonial countries and peoples and to guarantee those peoples the benefit of equal rights and self-determination have been dictated by historical necessity, just as it has been necessary to grant aid to those peoples in consolidating the independence they have gained. In response to these needs, the policy pursued by the United Nations with regard to the application of equal rights and self-determination of peoples has tended towards recognizing a wider and wider entitlement to those rights, in order to avoid any discrimination between peoples. This development is in keeping with the requirements of the establishment of a new international economic and political order. Thus the relevant instruments adopted by the United Nations state insistently that all peoples should enjoy the right to self-determination. While the Charter speaks of "equal rights and self-determination of peoples", General Assembly resolution 545 (VI) of 5 February 1952, entitled "Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination", contains the sentence: "All peoples shall have the right of self-determination". In its resolution 637 A (VII) of 16 December 1952, entitled "The right of peoples and nations to self-determination", the General Assembly recommended that "The States Members of the United Nations shall uphold the principle of self-determination of all peoples and nations". In its resolution 1514 (XV) of 14 December 1960, entitled "Declaration on the granting of independence to colonial countries and peoples", the General Assembly declared that: "All peoples have the right to self-determination". The two International Covenants on Human Rights also state, in article 1, that "All peoples have the right of self-determination" and this declaration has been repeated in subsequent United Nations documents.

268. The right of self-determination is thus accorded to all peoples, for the Charter of the United Nations uses the

term "peoples" a number of times, particularly in its Preamble, as a synonym for "nations" or "States". It is also clear from a reading of other legal instruments of the United Nations and from the Organization's consistent practice that all peoples possess the right in question. The principle of equal rights and self-determination should be understood in its widest sense. It signifies the inalienable right of all peoples to choose their own political, economic and social system and their own international status. The principle of equal rights and self-determination of peoples thus possesses a universal character, recognized by the Charter, as a right of all peoples whether or not they have attained independence and the status of a State. Furthermore, the very concept of the principle of equal rights and self-determination of peoples is extremely wide. It is made up of two equally important and closely related components: equal rights and self-determination. These two components are inseparable, for the right of peoples to self-determination derives from the principle of equal rights, and the meaning and scope of the former must be interpreted in the light of the latter. Consequently, the right to self-determination should not be restricted in a manner which might encroach upon the equal rights of all peoples; similarly, the Charter of the United Nations should not be interpreted as confining that right to a particular category of peoples, because, as United Nations practice has made clear, the word "peoples" as used in Article 1, paragraph 2, of the Charter means all peoples. Article 55 of the Charter also establishes clearly that the "peoples" to whom the principle applies include, in fact, all peoples. Nevertheless, the application of the principle to all peoples should not be interpreted as an encouragement to secessionist or irredentist movements, or as justifying activities aimed at changing a country's system of government. Interpretation of the principle in its widest sense leads to recognition of the indefinable rights of all peoples to determine freely and on terms of equality their own political, economic and social régime and their international status; this in reality a prerequisite for the progress of the international community.

269. The Charter and other United Nations instruments use the term "peoples". However, apart from the explanation given for this term in the memorandum prepared by the secretariat of the San Francisco Conference,¹⁰⁷ it will be found that there is no accepted definition of the word "people" and no way of defining it with certainty. The Charter is of little help on this point because it gives no details or explanations of the concept of "peoples". There is no text or recognized definition from which to determine what is a "people" possessing the right in question.

270. When various United Nations organs have examined the question of a definition of the term "people", widely varying opinions have been expressed. One body of opinion holds that, in bestowing the title of "people", no distinction can be made on the grounds that some peoples are under the sovereignty of another country, or live on a particular continent, or possess independent territories, or live in the territory of a sovereign State.

271. In another view, the word "peoples" should be understood to mean all those who are able to exercise their right of self-determination, who occupy a homogenous territory and whose members are related ethnically or in other ways.

¹⁰⁷ See para. 262 above.

272. The opinion has also been expressed that the word "peoples" should designate large, homogeneous national groupings; that the right of self-determination should be accorded only to peoples who lay an informed claim to it; and that politically backward peoples should be placed in the care of an international trusteeship system which would see to it that they develop the capacity to exercise their right of self-determination.

273. Yet another body of opinion holds that, for the purpose of defining the word "people", the principle of self-determination should be considered in application to the following two situations only; first, that of peoples occupying a geographical area which, in the absence of foreign domination, would have formed an independent State (colonial territories, Trust Territories, etc.); and second, the commoner situation of peoples occupying a territory that has become independent, but who may be subjected to new forms of oppression, in particular, neo-colonialism.

274. The view has also been expressed that the sole beneficiaries of equal rights and self-determination should be peoples which are under colonial or foreign domination, and that the difficulty of agreeing on a definition of the word ought in no case to prevent the application of the principle of self-determination to colonial peoples, for the international community has reached a sufficient degree of maturity to be able to distinguish between genuine self-determination and self-determination used as a cloak for secession. In the last analysis, could it not be said that the expressions "peoples" and "nations" are purely legal concepts, independent of political, social and economic factors? Could it not be said that any attempt at definition might prove dangerous to subject peoples by providing those who govern them with pretexts for denying them self-determination? One way of tackling the problem might be to make a study of the right of peoples and nations to self-determination and to begin by defining the terms "people" and "nation". Such a method is theoretically conceivable and would undoubtedly have its merits, but there would be a risk, in adopting it, of overlooking realities. The fact is that, whenever in the course of history a people has become aware of being a people, all definitions have proved superfluous.

275. It is difficult to arrive at a precise definition of the term "people", because the identification of a people to whom the principle would apply may present very complex problems. The various possibilities of interpretation and the consequent uncertainties could in many cases turn the right of peoples to self-determination into a weapon for use against the territorial integrity and political unity of States. Indeed, peoples might be used, against their real interests, to support aggressive or subversive designs for the benefit of foreign interests. Improperly understood, this right could also lead to the encouragement of secessionist movements in the territory of independent States, where any group whatsoever might believe that it had an immediate and absolute right to create a State of its own. No State, whether old or new, can consider itself free from this danger. Even those States which are ethnically the most homogeneous may find themselves the object of covetousness or of designs to dismember them.

276. The question of defining the concept of a "people" has traditionally been a source of difficulties. In the nineteenth century, the term "nation" was prevalently used, but

although this term represented a much narrower concept, it did not prove possible to reach universal agreement on a definition. The concept of a "people", which is much vaguer, has proved even more difficult to define. In some instances a people is easy to identify from objective factors, but that is not always the case. Furthermore, even if a people has a clear-cut identity, historical circumstances may create a close link between two or more separate communities. In such a case, the exercise of its rights by one of those communities, whether it constitutes the majority or a minority, cannot easily take place without harm to the rights of others.

277. In the context of the elimination of colonialism, any difficulties met with in determining what peoples should have the right of self-determination have proved easier to resolve. The solution has been found by adopting the principle of granting independence to "colonial countries and peoples" as laid down in the General Assembly Declaration on that subject (resolution 1514 (XV)).

278. Otherwise, when the question of defining the concept of a "people" has come up for consideration it has very often been noted that the task is difficult, and doubts have been expressed as to whether it is possible or even desirable to draft a definition that would be both universally applicable and generally accepted. Nevertheless, the definition of the word "people" has on various occasions been listed among questions needing study. For example, it has been suggested that the International Law Commission should make a study of certain legal aspects of the right of peoples to self-determination; that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should study the connexion between the self-determination of peoples and the protection of minorities; and that UNESCO should make a study of the concept of a "people" and its ethnic, sociological and psychological characteristics. Related questions which have been considered to call for study include the applicability of self-determination; the determination of criteria for deciding at what stage in its development a people should be recognized as having the right to self-determination; the criteria for determining what action peoples may legitimately take in order to attain their independence; consideration of the attitude to be taken by a State towards a group residing in its territory which claims the right to self-determination, and how far and by what means a State may resist that claim; consideration of the attitude to be adopted by other States in the event of a dispute between a Government and a people under its jurisdiction concerning that peoples' right to self-determination; the attitude to be adopted by States where the right of self-determination which one people wishes to exercise is in conflict with the right to existence of one or more other peoples and constitutes a threat to peace; the establishment of international guarantees against any aggression calculated to deprive peoples of their right of self-determination; recommendations concerning peoples who are under the authority of foreign Powers and who wish to attain independence; and international protection for underdeveloped nations.

279. The question of a definition of the term "people" is of the greatest importance, for it may affect the measures to be taken with regard to particular aspects of the matter, for example, the political aspect of the exercise of the right of self-determination, that is, the right of peoples to choose their international political status. Hence, because no defini-

tion has been formulated, the United Nations has proceeded with caution in cases of political self-determination, although it has acted firmly in the matter of the elimination of colonialism. This attitude is understandable in view of the possible consequences of decisions in this sphere. It would therefore be premature and even presumptuous to try to lay down here and now a definition which could be used in all parts of the world and which would cover all situations. However, the elements of a definition which have emerged from discussions on this subject in the United Nations cannot and should not be ignored. These elements can be taken into consideration in specific situations in which it is necessary to decide whether or not an entity constitutes a people fit to enjoy and exercise the right of self-determination:

(a) The term "people" denotes a social entity possessing a clear identity and its own characteristics;

(b) It implies a relationship with a territory, even if the people in question has been wrongfully expelled from it and artificially replaced by another population;

(c) A people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognized in article 27 of the International Covenant on Civil and Political Rights.

With regard to minorities, there is one principle of special importance. This is the principle developed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), first proclaimed in the Declaration on the granting of independence to colonial countries and peoples; it was subsequently echoed in many other resolutions of the United Nations General Assembly. This principle reads as follows:

Nothing in the foregoing paragraphs [formulating the principle of equal rights and self-determination of peoples] shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

Thus, according to this text, the principle of self-determination cannot be regarded as authorizing dismemberment or amputation of sovereign States exercising their sovereignty by virtue of the principle of self-determination of peoples.

3. NATIONS

280. "Nations"—entities to which the Charter of the United Nations refers at several points—are also holders of equal rights and the right of self-determination. Although they are not expressly mentioned in the formulation of this principle in the International Covenants on Human Rights, they are implied, being covered by the term "peoples". It should be noted, however, that in its resolution 637 A (VII) entitled "The right of peoples and nations to self-determination", the General Assembly postulated that "the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights", and recommended that "The States Members of the United

Nations shall uphold the principle of self-determination of all peoples and nations".

281. The independent State and the nation are fundamental realities for social development. The advancement of every nation and the consolidation of sovereignty and of national and State independence are thus an essential historical necessity. History shows that the emergence of the nation as a form of human community and a form of development of the national life of peoples is an inevitable social process, a necessary and compulsory stage in the evolution of every people. The nation has always had a powerful influence on the economic, social and political progress of peoples. Furthermore, in the world today, side by side with the older nations which have long been in existence and have reached an impressive stage of economic, technological, scientific and spiritual development, there are many nations, young or embryonic, which have a long way to go before they attain full development. Peoples who have struggled for many centuries to throw off a foreign yoke, and who are now enjoying the fruits of freedom, national independence and self-determination, cannot give up these sacred prerogatives which can alone ensure their progress along the road of civilization. The successes achieved by recently liberated peoples in consolidating their national independence are an encouragement and a spur to peoples still under the colonial and foreign yoke, which are striving to free themselves. The solution of economic and social development problems in the world of today and tomorrow is only conceivable within the political, State and national organization of each people; neither the over-all economic problems nor the problems of social change can be tackled and solved without taking into account the State as a form of organization, the existence of national States, and the existence and development of nations, because the nation and national feeling continue to be important factors in the development of social processes and social progress in our world. The break-up of the colonial system and the formation of a large number of new States which are taking an active part and establishing themselves in international life, working for independent development and for new relations between States and peoples, confirms the increased importance of the national factor. In these circumstances, the process of developing closer and broader relations among nations and peoples, thus expanding economic, technical and scientific co-operation, cannot be approached from a viewpoint which underestimates national feeling and traditions, but only from one which takes into consideration the objective factors in social life, such as mutual respect and esteem among nations and the national interests of each people. The intensification of the struggle to gain and consolidate independence and achieve national unity, and the vigorous manifestation of national feeling, show that mankind is passing through a historical process of great significance having profound repercussions over a long period of time on the development of international life. Experience has shown beyond all possible question that no forces or weapons in the world can thwart the resolve of a people who are determined to defend their freedom and independence. Thus the only way to build a lasting peace and establish co-operation in the interests of all peoples is through strict respect for national sovereignty and independence.

282. The sovereign national State is at present the main institution through which a nation expresses its wish to take

part in international life and play its role as a direct participant in the solution of international problems of concern to it. The inalienable prerogatives of the nation find expression, at the political and legal level, in the prerogatives of the State as the *chief agent in international relations*. As the prime subject of international law, the sovereign State expresses the sovereign will of the nation as an expression of the right to self-determination. The prerogatives of national States, of sovereign and independent States, are realized in a context in which they balance and harmonize their rights and duties as members of the international community and subjects of international law. As an expression and corollary of the right to self-determination, the sovereignty and independence of each State, and its inalienable and exclusive right to determine and implement its independent domestic and foreign policy, play a fundamental role in the establishment of a new international order, exercising a powerful influence not only on domestic social relations, but also on international relations. The complexity of the problem that mankind has to solve today shows clearly that the affirmation of national independence and sovereignty, and unimpeded action by sovereign States, is the only way to realize the vast material and human potential represented by sovereign nations and to harmonize their efforts to discharge the great tasks involved in international co-operation. The world to which it is reasonable to aspire is not a world in which small communities are dissolved and absorbed in a single giant community, but a world in which the existence and flourishing of such communities are compatible with the general order and are the basis on which it rests. The development of international relations demonstrates that nations are far from being ready to renounce the prerogatives of their national and State sovereignty, but, on the contrary, vigorously assert their determination to defend their independence and sovereignty as factors of decisive importance for the progress and prosperity of every country and primary conditions for new relationships based on lasting international co-operation.

283. National awareness represents the quintessence of the nation, being a result of the reflection of every characteristic of the nation. In the world of today, the phenomenon of national awareness is manifested quite explicitly in the reactions of peoples and nations to any act which infringes their national interests, dignity, sovereignty or independence. National awareness stimulates the constructive effort by which nations are created and preserves their national feeling unimpaired. We live in an age of awakening of national awareness, of the manifestation of the personality of nations which for centuries were not subjects, but objects of international law. Even in the case of nations which established themselves in past centuries, it is impossible to accept the idea of a deterioration of their national awareness, of an ageing process, an ossification of their national feeling, because life creates new problems for them as well, new aspirations and ideals appear which stimulate national awareness in all fields, demanding new efforts, attitudes and decisions in order to ensure that the nation remains a competitive presence in all areas of the international community.

4. STATES

284. The principle of equal rights and self-determination of peoples is one of the "principles of international law

concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations". It consequently finds application in the legal relations between States, creating both rights and duties for them.

285. The principle of equal rights and self-determination of peoples is applicable, in the case of independent peoples, in their relations with one another and, in their case, the exercise of this principle means that the freedom of action of every State is safeguarded. In the case of peoples constituted as States, respect for this principle is a continuation of the fundamental rights and duties of States deriving from the other principles of international law concerning friendly relations and co-operation among States. Being applicable in relations between States, the principle of equal rights and self-determination of peoples applies to all States; so much is clear from the Charter and from United Nations declarations and resolutions. The principle creates rights and duties between peoples constituted as independent States, and rights and duties between States as subjects of international law. In the context of relations between States in particular, the principle imposes upon States, for example, the obligation not to thwart the exercise of the right of self-determination by the population of another State, or to act in any manner incompatible with the exercise of that right by that population.

286. States—that is to say, peoples constituted as States—are the holders of the right to equality and self-determination, and they cannot be deprived of it because they have formed an independent State; this means that such peoples are at liberty to choose their institutions, to conduct their domestic and foreign affairs freely, and to pursue their economic, social and cultural development. The object of the exercise of the right of self-determination is the achievement of full sovereignty and complete independence, and all States should try to ensure that peoples which have exercised this right can choose to live under a régime that is truly sovereign and fully independent, for only then can the goal of the sovereign equality of States be attained. The application of this principle is an essential factor in political, economic, social and cultural development, and respect for it is a prerequisite for progress, because it implies for all peoples constituted as States the right to decide on their own future without foreign interference, on the basis of the free and genuine expression of their will. The San Francisco Conference considered this to be an essential element of the principle of self-determination.

287. In the case of peoples constituted as States, the principles of equal rights and self-determination, together with that of sovereign equality, is of evergrowing importance; for in the context of the development of international society the political liberation of peoples must be accompanied by economic liberation and social development. Generally speaking, self-determination is not achieved merely by winning political independence, and even in this sphere the process must continue permanently. Political independence is impossible without economic independence, and this means that the State must have control over its natural resources. It is essential that a people should be politically independent in order to be able to enjoy the use of its natural resources, for when a people is deprived of some of its national and State prerogatives, it ceases to be free and its development is jeopardized. Thus the principle of equal rights and self-determination is not merely a valid

claim for peoples who have not yet attained their independence, but an absolute necessity for peoples constituted as sovereign and independent States, so that they may be in a position to organize their lives as they see fit, in accordance with their genius and their choice.

F. The content of the principle of equal rights and self-determination of peoples

1. VARIOUS POSSIBLE INTERPRETATIONS OF THE CONTENT OF THE RIGHT TO SELF-DETERMINATION

288. At the eighth session of the Commission on Human Rights, during the examination of the question of defining "the right of peoples and nations to self-determination", it was said that various interpretations were possible. The following opinions were expressed:¹⁰⁸

(a) Some thought that self-determination was synonymous with self-government. It was argued against this that the Charter of the United Nations established a distinction between the concept of self-government and that of self-determination; that in Articles 1 and 55 the reference to self-determination appeared to be the recognition of the sovereignty of States and their obligation to respect the sovereignty of other States; and that in Chapter XI, concerning Non-Self-Governing Territories, the Charter did not mention self-determination but laid down, among other obligations upon States responsible for the administration of Non-Self-Governing Territories, the obligation to develop self-government.

(b) It was suggested that the right of self-determination meant the right of a people to decide on its own international status (direct access to independence, association, secession, union, etc.), while self-government meant autonomy in the domestic administration of a country.

(c) It was said further that the right of self-determination might also be understood to refer to peoples struggling for their independence. The view was expressed that the Commission should define self-determination and should attempt to decide how far mere separatist movements or vague aspirations to self-government should be included in the concept.

(d) Some members expressed the view that the right of peoples to self-determination was also applicable to peoples which had already formed independent national States whose independence was threatened.

(e) Another view was that the right of peoples to self-determination meant their right freely to determine by and for themselves their political, economic, social and cultural status.

(f) The opinion was expressed that it was unnecessary to attempt to define self-determination, which should be proclaimed for all peoples with special emphasis on the peoples of Non-Self-Governing Territories.

(g) Some members expressed the view that the right of peoples to self-determination should not be regarded solely from the political point of view, but should also be considered from the economic aspect, since political independence was based on economic independence, and that the right of peoples freely to dispose of their own natural resources

should be recognized. It was said that that would not mean that States would arbitrarily denounce agreements, but that they would settle the matter of relations between nations and foreign private undertakings which made large profits by exploiting a country's natural resources without, in most cases, being affected by its laws. The realization of the right of peoples to self-determination, in accordance with United Nations principles, should enable any State to acquire complete control of its own natural resources and should place that State in a position to apply its national laws to any private industry, even if those laws sanctioned the expropriation or nationalization of certain undertakings on fair conditions.

(h) Other members argued that, in order to correct past abuses of rights granted under contractual arrangements, it would be more appropriate to incorporate limitations in such agreements, rather than to include statements in a treaty which might invalidate contracts and make international co-operation impossible. It was also argued that to include such a provision in the covenants would mean that international agreements might be arbitrarily revoked, and that it might discourage foreign investments in the underdeveloped areas, as well as any kind of technical assistance programmes. Another view was that to attempt to define the relations between States owning resources and States or their nationals seeking to develop such resources was not appropriate in covenants on human rights, because they concerned rights of States rather than rights of individuals.

(i) Some members stated that the principle of the right of peoples to self-determination as proclaimed in the Charter was not unqualified. In Articles 1 and 55, it was included as a means of achieving friendly relations among nations. Articles 73 b and 76 b contained references to "self-government" and to "independence", not to "self-determination". It was argued that a statement of the principle of the right of all peoples to self-determination was therefore essential in the covenants on human rights. The majority of the Commission, however, considered that the covenants should contain an article on the right of self-determination in full conformity with the Charter.

(j) Other members considered that, in view of the limited scope, in their opinion, of the reference to self-determination in the Charter, the article to be drafted might conflict with the existing provisions of the Charter or constitute a virtual amendment to those provisions. It was pointed out that in drafting the Universal Declaration of Human Rights, the Commission, after lengthy deliberations, had succeeded in working out a more explicit and detailed proclamation of human rights by beginning with the Charter provisions; and that if the Commission wished to draw up a document on the rights of peoples similar to the Universal Declaration of Human Rights, it could likewise find guidance in the Charter.

(k) The right of self-determination was the right of all peoples and nations "freely to determine their political, economic, social and cultural status". Such a definition was very broad in conception. All peoples and nations should be free to determine their political institutions, exploit their economic resources and chart their social and cultural development for themselves, safe from any interference by other peoples or nations.

(l) It was argued against that proposal that the definition was too broad, and that it might be invoked to justify the burning of foreign books or the confiscation of foreign capi-

¹⁰⁸ See *Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4 (E/2256)*, paras. 34 et seq.

tal. Moreover, it was neither sufficiently explicit nor sufficiently comprehensive; lastly, the meaning of the word "status" was far from clear.

(m) It was proposed that a reference to "political status" should be made in the covenant on political rights and a reference to "economic, social and cultural status" in the corresponding covenant. But that proposal was based on an artificial distinction between political status and economic, social and cultural status, and every people, every nation, was or should be a complete entity; a people or nation that could freely determine its political status would have difficulty in freely determining its economic, social and cultural status. The converse was equally true.

(n) It was suggested that the content of the right of self-determination should be defined in concrete terms: for example it should encompass, for all peoples and nations, the right "to create an independent State", the right "to secession or to union with another people or nation", etc. Those suggestions were not accepted, because it was feared that any enumeration of the constituent elements of the right of self-determination would be incomplete. It was thought better to affirm the right in an abstract form.

(o) All States were bound to promote the realization of that right in all their territories and to respect the maintenance of that right in other States. Consequently, the obligation extended to all States, whether or not they administered Non-Self-Governing or Trust Territories. Therefore, all States should promote the realization of the right of self-determination and respect the maintenance of that right, in conformity with the provisions of the Charter of the United Nations. Two restrictive clauses that had been considered were not adopted. The first required the right of self-determination to be exercised "in accordance with constitutional processes", and the second called for "proper regard for the rights of other States and peoples". The purpose of the requirement of "constitutional processes" was to make it clear that the right of self-determination should be exercised by "peaceful means, in accordance with the principles of law"; but it was argued that such a requirement would be an insurmountable obstacle to the exercise of the right of self-determination if it was to be interpreted to mean, for example, that, before the right of a Non-Self-Governing or Trust Territory to self-determination was recognized, the Constitution of the metropolitan Power must be changed. The requirement of "proper regard for the rights of other States and peoples" was criticized, on the grounds that it subordinated the exercise of a fundamental right to observance of all the rights of other States and peoples, even secondary and acquired rights.

(p) With regard to the right of permanent sovereignty over natural wealth and resources, it was argued that the expression "right of permanent sovereignty" did not reflect a tenable concept, since States could restrict their own sovereignty at any time and of their own free will. Moreover, the provision could be invoked to justify the expropriation or arbitrary confiscation of foreign property or the unilateral denunciation of international agreements or treaties. On the other hand, it was maintained that the right of peoples to self-determination unquestionably implied the simple and elementary principle that peoples and nations should be able to dispose freely of their natural resources and wealth. It was emphasized that the purpose of the proposal was not to discourage foreign investors by threatening them with expropriation or seizure, but to put them on their guard against

any attempt at expropriation whereby local populations would be deprived of their own means of subsistence.

2. EQUAL RIGHTS AND SELF-DETERMINATION AS CONSTITUENT ELEMENTS OF A SINGLE NORM OF INTERNATIONAL LAW

289. At the 1945 San Francisco Conference, the report of the Rapporteur of Subcommittee I/1/A of Committee I/1 (1 June 1945) stated with reference to Article 1, paragraph 2, of the Charter that "the principles of equal rights of peoples and that of self-determination are two component elements of one norm."¹⁰⁹

290. This one norm thus embraces two concepts: that of equal rights and that of self-determination. The two concepts are complementary and inseparable. There is a close link between them, because neither is conceivable without the existence of the other. To recognize and apply one of them is implicitly to recognize and apply the other. The recognition of equal rights implies respect for independence—in other words, for the right of peoples to self-determination—while the exercise of the right of peoples to self-determination is a prerequisite for the enjoyment of equal rights.

291. Although they seem distinct, the two concepts of equal rights and self-determination of peoples are none the less inseparable, for the right to equality prohibits one people from exercising domination over another, while the right to self-determination means that one people is equal to another.

292. To affirm the equal rights of peoples is to state not only that all peoples have the same rights, to one and the same degree, and may exercise them freely, without constraint or pressure, but also that it is the duty of every State to respect the rights of other States, since friendly relations and co-operation among nations depend on respect for the rights of other States. Linked with the principle of the equal rights of peoples is their right to national unity and territorial integrity.

293. Equal rights are essential for all peoples and all States. By virtue of that principle, a people and its State should be placed on an equal footing with other peoples and States and should enjoy equal legal status and true freedom of choice with regard to their political, economic, social and cultural development. In the matter of economic development, and of the establishment of a new international economic order, equality should be complemented by the notion of fairness, by virtue of which the international community should lend its support to the efforts of the developing countries.

3. DEVELOPMENT OF THE CONTENT OF THE PRINCIPLE

294. Over the period which has elapsed since the entry into force of the Charter of the United Nations, the content of the principle of equal rights and self-determination of peoples has undergone substantial changes which have clarified and developed it in keeping with the evolution of the international community.

295. The abolition of colonialism and the granting of independence to colonial countries and peoples have played

¹⁰⁹ *Documents of the United Nations Conference on International Organization, I/1/A/19* (vol. VI, p. 703).

a decisive role in the intensive development of the right of subject peoples to independence and national sovereignty. The United Nations has made more explicit not only the content of the right of such peoples to political self-determination, but also the measures to be taken to that end. The various rules that have been enunciated in this way constitute a veritable law of decolonization.

296. The permanent sovereignty of peoples over their natural wealth and resources, proclaimed by the United Nations in the context of decolonization, is the essential feature of the economic aspect of self-determination, in other words, of the right of peoples to pursue their economic development. The realization of the right of peoples to economic development is the basic objective of the establishment of a new international economic order, as proclaimed by the United Nations. This process is fully under way and has generated new rules that form a veritable law of development.

297. The Charter of the United Nations contains provisions relating to the solution of international problems in the social field. For the achievement of that purpose, all Members “pledge themselves to take joint and separate action in

co-operation with the Organization” to lay the foundation for setting objectives, proclaiming principles and advocating measures designed to guarantee the realization of the right of peoples to pursue their social development. In the context of the establishment of a new international economic order, the United Nations has proclaimed a particularly significant principle: namely, that economic development should be accompanied by social development. In that connexion, measures have been advocated to promote social progress and development.

298. In fulfilment of the obligation imposed by Article 55 of the Charter to promote solutions of international problems in the cultural and educational fields, the United Nations and the specialized agencies have proclaimed principles of international cultural co-operation that are of substantial importance for the realization of the right of peoples to pursue their cultural development.

299. Thus United Nations practice has clarified and developed the content of the equal rights of peoples and their right to self-determination; that right is being steadily extended to include the political, economic, social and cultural aspects of the life of peoples.

Chapter IV

THE RIGHT OF PEOPLES FREELY TO DETERMINE THEIR POLITICAL STATUS

A. General considerations

300. The Charter of the United Nations contains only one provision dealing with the content of the right of peoples to political self-determination. This is Article 76 concerning the basic objectives of the trusteeship system, which include in particular "self-government or independence" for the inhabitants of the trust territories.

301. A number of General Assembly resolutions refer to the objectives of the trusteeship system. For instance, in resolution 558 (VI) of 18 January 1952 entitled "Attainment by the Trust Territories of the objective of self-government or independence", the General Assembly considered that:

under Article 76 *b* of the Charter one of the basic objectives of the International Trusteeship System is the progressive development of the inhabitants of the Trust Territories towards self-government or independence as may be appropriate to the particular circumstances of each Territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided in the terms of each Trusteeship Agreement.

This provision is reaffirmed in resolutions 858 (IX) of 14 December 1954, 946 (X) of 15 December 1955, 1064 (XI) of 26 February 1957, 1207 (XII) of 13 December 1957, 1274 (XIII) of 5 December 1958 and 1413 (XIV) of 5 December 1959, all relating to the attainment of self-government or independence by trust territories.

302. In proclaiming the right of peoples to political self-determination, the Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV) of 14 December 1960) provides that peoples "freely determine their political status". This formula reappears in the International Covenants on Human Rights and in the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970). The latter Declaration also contains a provision to the effect that "Each State has the right freely to choose and develop its political, social, economic and cultural systems", which also expresses the idea of political self-determination.

303. The "political status" which each people has the right freely to determine by virtue of the equal rights and self-determination of peoples comprises both international status and domestic political status. Consequently, the application of the principle of equal rights and self-determination of peoples in the political field has two aspects, which are of equal importance. The first is the right of peoples to determine their international status, their right to independence, and their right to decide their own destiny in the international community. The second is the right of peoples freely to choose and develop the domestic political system which they desire and which, in their view, corresponds to their aspirations and political objectives. The

right of peoples to determine their own international status implies both internal self-government and external independence. External independence derives from the right of peoples to enjoy the international legal status corresponding to sovereignty. All aspects of this right should be exercised by peoples in full freedom, since freedom to decide their future without intervention or pressure from outside and without owing allegiance to other Powers is essential to their emancipation and progress. Self-determination is the only way in which the equal rights of peoples can be obtained. Conversely, foreign control over a country and a people is bound to frustrate their right to self-determination and delay their progress.

B. The right of peoples to determine their international status

1. MODES OF EXERCISING THIS RIGHT

304. The modes of exercising the right of peoples to determine their international status have been most fully defined in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which contains the latest pronouncement on the subject. It reads as follows:

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

305. On a number of occasions, the United Nations has used the plebiscite as a practical and technical mode for expression of the will of colonial peoples to choose their form of independence. The resolutions adopted by the General Assembly between 1953 and 1959, relating to Togo¹¹⁰ and Cameroon¹¹¹ are evidence of this. At the same time, the United Nations has rejected and condemned all those means which have been used with a view to justifying annexations, such as administrative unions affecting trust territories.¹¹²

306. In resolution 1541 (XV) of 15 December 1960, the General Assembly adopted a number of "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 *e* of the Charter".

¹¹⁰ Resolutions 750 (VIII), 860 (IX), 944 (X), 1044 (XI), 1046 (XI), 1182 (XII), 1253 (XIII) and 1416 (XIV).

¹¹¹ Resolutions 1282 (XIII), 1349 (XIII), 1350 (XIII) and 1352 (XIV).

¹¹² Resolutions 224 (III), 326 (IV), 563 (VI) and 649 (VII).

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.

Principle II states that:

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a "full measure of self-government".

It should also be noted that the report of the Special Committee of Six on the Transmission of Information under Article 73*e* of the Charter contained the following observations:

[...] since 1946 over 100 million people in some thirty dependent territories have attained the goals set forth in Chapter XI. Many independent States which were previously Non-Self-Governing Territories have been admitted to the membership of the United Nations. The right of dependent peoples to choose their own destiny is more universally accepted today than at any time since the signing of the Charter in San Francisco. The Charter was the culmination of progressive evolution in international thinking for it expressed international concern for the welfare and freedom of dependent peoples in a manner which went far beyond that of any previous similar international instrument. There now exists general recognition that independence is among the rightful aspirations of every nation, the fulfilment of which is an important factor in the preservation of international peace and security.

[...] The Charter is a living document and the obligations under Chapter XI must be viewed in the light of the changing spirit of the times. Under Article 73 of the Charter, Members of the United Nations recognize that in Non-Self-Governing Territories the interests of the inhabitants are paramount. The progressive development of self-government must take into account the particular circumstances of a territory and the aspirations of its peoples. Such development must be in tune with the movement towards freedom and equality everywhere.¹¹³

2. THE ESTABLISHMENT OF A SOVEREIGN AND INDEPENDENT STATE

(a) *General considerations*

307. The principal meaning of self-determination is the establishment of a sovereign and independent State—the right to independence of peoples which aspire to it but do not possess it. This is the interpretation underlying the Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV)), one of the most important resolutions adopted by the Assembly. Although paragraph 2 of the resolution expresses the general acceptance of self-determination, it is significant that the right of peoples to attain independence should have been so precisely formulated in a General Assembly resolution. The right to independence has two aspects. One is negative: the right of every people not to be exchanged or ceded against its will; and the other is positive: the right of a people to form part of the State of its choice or to form an independent State.

308. By exercising its right to independence and setting up its own sovereign and independent State, a people accedes to the benefits of sovereign equality and of the other principles of international law concerning friendly relations and co-operation among States. This is the logical inference from Article 78 of the Charter, which provides that:

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Thus the sovereign equality of States is a continuation of the right of peoples to independence. By virtue of the sovereign equality which all States enjoy, they have equal rights and duties and are equal members of the international community, notwithstanding economic, social, political or other differences. The other elements of sovereign equality, as defined by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, also apply in the case of peoples constituted as States, namely:

- (a) States are juridically equal;
- (b) Each State enjoys the rights inherent in full sovereignty;
- (c) Each State has the duty to respect the personality of other States;
- (d) The territorial integrity and political independence of the State are inviolable;
- (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
- (f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

309. The self-determination of peoples is thus the basis of the sovereignty of the State, since that sovereignty results from the implementation of the right of peoples to self-determination, of their right to organize their domestic life as they see fit. Relations in the international community cannot be imagined without respect for the sovereign rights of nations and peoples. Any violation of their right to independence is a serious attack on their personality and on their very existence—a form of subjection with grave consequences at the international level, since all violations of the right of peoples to independence and of the sovereignty of States constitute violations of international law and imperil international peace and security. The present-day world has witnessed a strong affirmation of the right of peoples to independence, a headlong process of establishment of independent and sovereign States by peoples hitherto under the colonial and alien yoke. The peoples who have thus won their sovereignty through a national or social liberation struggle are fighting to defend and strengthen it. Respect for the independence of peoples and for the sovereignty of States is a prerequisite for the maintenance of peace and the development of international co-operation.

(b) *Constituent elements of the right to independence*

310. By its resolutions 567 (VI) of 18 January 1952, 648 (VII) of 10 December 1952 and 742 (VIII) of 27 November 1953, the General Assembly adopted a list of "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government". On approving this list, the General Assembly recommended that it should be used by the General Assembly and the Administering Member States as a guide in determining whether any territory, due to changes in its constitutional status, was or was no longer within the scope of Chapter XI of the Charter, in order that a decision might be taken by the General Assembly on the continuation or cessation of the transmission of information required by Chapter XI of the Charter. This list of factors has to some extent been superseded by the adoption of the Declaration on the granting of indepen-

¹¹³ *Official Records of the General Assembly, Fifteenth Session, Annexes, agenda item 38, document A/4526, paras. 17-18.*

dence to colonial countries and peoples, which recognizes "that the peoples of the world ardently desire the end of colonialism in all its manifestations" and declares that "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence". Nevertheless, in its first part, the list enumerates several factors "indicative of the attainment of independence", and thus retains some validity.

311. The first part of the List of Factors entitled "Factors indicative of the attainment of independence" (General Assembly resolution 742 (VIII)) contains the following elements:

A. International status

1. *International responsibility.* Full international responsibility of the Territory for the acts inherent in the exercise of its external sovereignty and for the corresponding acts in the administration of its internal affairs.

2. *Eligibility for membership in the United Nations.*

3. *General international relations.* Power to enter into direct relations of every kind with other governments and with international institutions and to negotiate, sign and ratify international instruments.

4. *National defence.* Sovereign right to provide for its national defence.

B. Internal self-government.

1. *Form of government.* Complete freedom of the people of the Territory to choose the form of government which they desire.

2. *Territorial government.* Freedom from control or interference by the government of another State in respect of the internal government (legislature, executive, judiciary and administration of the Territory).

3. *Economic, social and cultural jurisdiction.* Complete autonomy in respect of economic, social and cultural affairs.

(c) The law of decolonization

312. The right of peoples to independence, and to the establishment of sovereign and independent States, has developed over the past 15 years in the context of the process of abolishing colonialism, on the basis of the Declaration on the granting of independence to colonial countries and peoples. This Declaration, by stating the purposes and the applicable principles, marked a historic moment in the process. Subsequent resolutions by the General Assembly and the Security Council have established measures connected with the implementation of the Declaration and the application of the right of colonized peoples to independence.

313. The Declaration on the granting of independence to colonial countries and peoples is a legal and political instrument of exceptional importance. For the first time, the General Assembly solemnly proclaimed "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations". This proclamation was based on the following considerations:

The peoples of the world ardently desire the end of colonialism in all its manifestations;

The continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations' ideal of universal peace;

The process of liberation is irresistible and, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith;

All peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory.

The General Assembly declared that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

314. These principles have been reaffirmed, developed and applied by various other resolutions of the General Assembly and of the Security Council, and particularly in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), which solemnly proclaims that:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and inde-

pendence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

315. To ensure the implementation of the Declaration on the granting of independence to colonial countries and peoples, the General Assembly, by its resolution 1654 (XVI) of 27 November 1961, established a Special Committee "to examine the application of the Declaration" and "to make suggestions and recommendations on the progress and extent of the implementation of the Declaration"; and by its resolution 2621 (XXV) of 12 October 1970, it adopted a Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

316. The various General Assembly resolutions concerning implementation of the Declaration on the granting of independence to colonial countries and peoples recommend measures to be taken by States and by the specialized agencies of the United Nations. As a result of their general application, these measures have taken on a legal character which makes it possible to regard them as part of the "law of decolonization". The main provisions of the "Programme of action" read as follows:

Member States shall do their utmost to promote, in the United Nations and the international institutions and organizations within the United Nations system, effective measures for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in all Trust Territories, Non-Self-Governing Territories and other colonial Territories, large and small, including the adoption by the Security Council of effective measures against Governments and régimes which engage in any form of repression of colonial peoples, which would seriously impede the maintenance of international peace and security.

To this end, the General Assembly has urged all administering Powers to take immediate steps in order that all colonial territories and peoples may accede to independence without delay in accordance with the provisions of paragraph 5 of the Declaration, and has constantly deplored the negative attitude of certain colonial Powers which refused to recognize the right of colonial peoples to independence. Similarly, the General Assembly has invited the Special Committee, whenever it considers it appropriate, to recommend a deadline for the accession to independence of each Territory in accordance with the wishes of the people and the provisions of the Declaration.

Member States shall render all necessary moral and material assistance to the peoples of colonial Territories in their struggle to attain freedom and independence.

In particular, the General Assembly has urged all States and the specialized agencies and other organizations within the

United Nations system, in consultation, as appropriate, with the Organization of African Unity, to provide moral and material assistance to all peoples under colonial and alien domination struggling for their freedom and independence, in particular to the national liberation movements of the Territories in Africa. With regard to the support that should be given by the specialized agencies, the General Assembly has adopted between 1968 and 1974 special resolutions on Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations.¹¹⁴

Member States shall intensify their efforts to promote the implementation of the resolutions of the General Assembly and the Security Council relating to Territories under colonial domination.

The General Assembly has reaffirmed that the continuation of colonialism in all its forms and manifestations — including racism, *apartheid* and activities of foreign economic and other interests which exploit colonial peoples, as well as the waging of colonial wars to suppress the national liberation movements of the colonial territories in Africa — is incompatible with the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples and poses a threat to international peace and security. It has consequently requested the Special Committee to apprise the Security Council of any developments in any territory examined by the Committee which may threaten international peace and security and to make concrete suggestions which could assist the Council in considering appropriate measures under the Charter. In this connexion, the General Assembly has drawn the attention of the Security Council to the need to continue to give special attention to the problems of southern Africa by adopting measures to ensure the full implementation of General Assembly resolution 1514 (XV) of 14 December 1960 and of the Council's own resolutions. The General Assembly has deplored the attitude of certain States which, despite the resolutions of the General Assembly and of the Special Committee, persisted in co-operating with Governments which were continuing to oppress the inhabitants of dependent territories. It has requested all States, directly and through their action in the specialized agencies and other organizations within the United Nations system, to withhold or continue to withhold assistance of any kind from the Government of South Africa and from the illegal racist minority régime in Southern Rhodesia until they restore to the peoples of Namibia and Zimbabwe their inalienable right to self-determination and independence and to refrain from taking any action which might imply recognition of the legitimacy of the domination of the territories by those régimes.

Member States shall wage a vigorous and sustained campaign against activities and practices of foreign economic, financial and other interests operating in colonial Territories for the benefit and on behalf of colonial Powers and their allies, as these constitute a major obstacle to the achievement of the goals embodied in resolution 1514 (XV). Member States shall consider the adoption of necessary steps to have their nationals and companies under their jurisdiction discontinue such activities and practices; these steps should also aim at preventing the systematic influx of foreign immigrants into colonial Territories, which disrupts the integrity and social, political and cultural unity of the peoples under colonial domination.

¹¹⁴ Resolutions 2426 (XXIII), 2555 (XXIV), 2704 (XXV), 3118 (XXVIII) and 3300 (XXIX).

On this subject, the General Assembly has also adopted several special resolutions between 1967 and 1975.¹¹⁵

Member States shall carry out a sustained and vigorous campaign against all military activities and arrangements by colonial Powers in Territories under their administration, as such activities and arrangements constitute an obstacle to the full implementation of resolution 1514 (XV).

The General Assembly has called upon the colonial Powers to dismantle their military bases and installations in colonial Territories immediately and unconditionally, and to refrain from establishing new ones. It has condemned the policies, pursued by certain colonial Powers in the Territories under their domination, of imposing non-representative régimes and constitutions, strengthening the position of foreign economic and other interests, misleading world public opinion and encouraging the systematic influx of foreign immigrants while evicting, displacing and transferring the indigenous inhabitants to other areas, and has called upon those Powers to desist forthwith from such policies. It has condemned colonialist and racist repression and urged that they be ended. It has declared that the practice of using mercenaries against movements for national liberation and independence is punishable as a criminal act and that the mercenaries themselves are outlaws, and it has called upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence and prohibiting their nationals from serving as mercenaries. The General Assembly has also reaffirmed on numerous occasions its recognition of the legitimacy of the struggle of the colonial peoples and peoples under alien domination to exercise their right to self-determination and independence by all the necessary means at their disposal. It has affirmed the principle that all freedom fighters under detention should be treated in accordance with the relevant provisions of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949; and on this subject it has adopted a special resolution entitled "Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes" (resolution 3103 (XXVIII) of 12 December 1973).

All States shall undertake measures aimed at enhancing public awareness of the need for active assistance in the achievement of complete decolonization and, in particular, creating satisfactory conditions for activities by national and international non-governmental organizations in support of the peoples under colonial domination.

The United Nations as well as all States shall intensify their efforts in the field of public information in the area of decolonization through all media, including publications, radio and television. Of special importance will be programmes relating to United Nations activities on decolonization, the situation in colonial Territories and the struggle being waged by colonial peoples and the national liberation movements.

On this subject the General Assembly has also adopted several special resolutions between 1971 and 1974.¹¹⁶

The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples shall continue to examine the full compliance of all States with the Declaration and with other relevant resolutions on the question of decolonization. The question of territorial size, geographical isolation and limited resources should in no way delay the implementation of the Decla-

ration. Where resolution 1514 (XV) has not been fully implemented with regard to a given Territory, the General Assembly shall continue to bear responsibility for that Territory until such time as the people concerned has had an opportunity to exercise freely its right to self-determination and independence in accordance with the Declaration. The Special Committee is hereby directed:

(a) To continue to assist the General Assembly in finding the best ways and means for the final liquidation of colonialism;

(b) To continue to give special consideration to the views expressed orally or in written communications by representatives of the peoples in the colonial Territories;

(c) To continue to send visiting missions to the colonial Territories and to hold meetings at places where it can best obtain first-hand information on the situation in colonial Territories, as well as to continue to hold meetings away from Headquarters as appropriate;

(d) To assist the General Assembly in making arrangements, in co-operation with the administering Powers, for securing a United Nations presence in the colonial Territories to participate in the elaboration of the procedural measures for the implementation of the Declaration and to observe the final stages of the process of decolonization in the Territories;

(e) To prepare draft rules and regulations for visiting missions for approval by the General Assembly.

3. FREE ASSOCIATION

317. With regard to free association, General Assembly resolution 1541 (XV) of 15 December 1960 entitled "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 *e* of the Charter" provides in its Annex that:

Principle VII

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

4. INTEGRATION WITH AN INDEPENDENT STATE

318. With regard to integration with an independent State, the Annex to the some General Assembly resolution provides as follows:

Principle VIII

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

Principle IX

Integration should have come about in the following circumstances:

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its

¹¹⁵ Resolutions 2288 (XXII), 2425 (XXIII), 2554 (XXIV), 2703 (XXV), 2979 (XXVII), 3117 (XXVIII), 3299 (XXIX), and 3398 (XXX).

¹¹⁶ Resolutions 2879 (XXVI), 2909 (XXVII), 3164 (XXVIII) and 3329 (XXIX).

peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

C. The right of peoples to choose and develop their internal political system

319 This right is expressed most clearly in the General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.¹¹⁷ The Charter of the United Nations uses the term "self-government" to describe this legal situation. This term is employed in the same sense in various General Assembly resolutions. For example, resolution 742 (VIII) of 27 November 1953, entitled "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government" uses this term and also mentions several elements of internal self-government,¹¹⁸ namely;

1. *Form of government.* Complete freedom of the people of the Territory to choose the form of government which they desire.
2. *Territorial government.* Freedom from control or interference by the government of another State [...].
3. *Economic, social and cultural jurisdiction* [...].

The principle of equal rights and self-determination of peoples comprises, for a people organized as an independent State, the right to take its own decisions concerning its political, economic, social and cultural systems. All peoples have the right to equip themselves with the political, economic and social institutions of their choice, the right to decide their own future, to choose their own form of government, to set their political objectives, to construct their systems and to draw up their philosophical programmes without any pressure, whether direct or indirect, internal or external. This is an aspect of the principle which will always keep its validity, since, if a people that had obtained its independence was subsequently deprived of internal self-determination, the principle would be completely undermined. It should be noted that this aspect of self-determination is not of direct concern to international law, either in its essence or in its operation. Every State has the sole right to make decisions in this field, without any external interference. This aspect of the principle covers, for every State, a number of rights, namely: the right to adopt whatever political, economic and social systems it sees fit; the right to adopt the legal system it desires, whether of constitutional law, private international law, administrative law or any other form of law; without any limitation other than respect for human rights; the right to shape its foreign policy as it deems necessary, including the right to conclude, modify and denounce international treaties, without any restrictions other than those imposed by the generally accepted rules of international law; and the right to dispose freely of its national wealth and natural resources, in accordance with its own interests.

¹¹⁷ See para. 302 above.

¹¹⁸ See para. 311 above.

D. Political status and civil and political rights

320. In the fulfilment of the right to self-determination, the exercise of civil and political rights plays a very important role, while, at the same time, the latter rights are conditioned by economic and social rights in a two-way relationship.

321. Civil and political rights are proclaimed by both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which has already entered into force.

322. The prohibition of discrimination based on criteria of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, is of great importance in guaranteeing the free exercise of the right to self-determination. In this context, note should be taken of the second paragraph of article 2 of the Universal Declaration of Human Rights, which proclaims:

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The prohibition of discrimination precludes any negative distinction, any exclusion or limitation of human rights in the case of individuals or groups, as well as any preference based on such a distinction. The fact that such discrimination was practised in colonial or dependent countries led the General Assembly to proclaim in the Declaration on the granting of independence to colonial countries and peoples, adopted in 1960, that the

subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

The above-mentioned instruments prohibit the introduction of any form of discrimination by law and impose on States the obligation to protect the individual not only against discrimination, but also against incitement to such discrimination, and they also establish his right to obtain a remedy against such discrimination by recourse to the law.

323. Another right of particular importance for the exercise of the right to self-determination is the right of every individual to participate in the government of his country — a right which is to be exercised directly or through freely chosen representatives. The will of the people, which constitutes the basis for governmental authority, must be expressed through periodic and genuine elections by universal and equal suffrage and by secret ballot or equivalent free voting procedures. The right to participate in the government of the country also implies the right of every individual to have access, on general terms of equality, to public service in this country.

324. The rights of everyone to freedom of thought, conscience and religion, and to freedom of opinion and expression, are also of great importance for the exercise of the right to self-determination, as is the right of peaceful assembly and of freedom of association with others. Freedom of opinion is surely a private matter pertaining to the personality and thought of each individual; no law can regulate the opinions of an individual or dictate those which he should or should not hold. Freedom to express one's opinions, on the other hand, is a public matter, relating to human relations and, consequently, subject to legal and

moral restrictions. Under the Universal Declaration of Human Rights and the International Covenant on Civil and political Rights, States have undertaken to guarantee their populations freedom “to seek, receive and impart information and ideas”; this right may be subject to certain restrictions which must, however, be expressly established by law and be necessary for respect of the rights and reputations of others, or for the protection of national security, public order, public health or morals; any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are strictly forbidden.

325. In the same context, special importance should be attached to the rights provided for in article 27 of the International Covenant on Civil and Political Rights, which provides that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

326. Freedom of opinion is connected with the right of peaceful assembly and the right of everyone to freedom of association with others. The “peaceful” character of assemblies and associations has been described as follows in the course of debates in the General Assembly of the United Nations: “the absence from their activities of any turmoil, disorder, conflict or fighting, including the use of weapons”. It is important to lay stress also on their voluntary nature and on the prohibition of any pressure on individuals to join associations or to take part in assemblies whose purposes are inconsistent with their political opinions or interests. No restrictions may be placed upon the exercise of this right other than those imposed in conformity with the law

and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

327. There is a link and mutual influence between civil and political rights on one hand, and economic, social and cultural rights on the other; the two groups of rights are closely connected, so that the absence of one makes enjoyment of the other impossible. Recognition and full enjoyment of economic, social and cultural rights is the only sure basis for guaranteeing the exercise of civil and political rights, since civil and political rights would be devoid of meaning if respect for economic, social and cultural rights were not assured. The efforts of the international community to establish a new international economic order have once again shown how crucial and essential it is to guarantee for all peoples the enjoyment of economic, social and cultural rights. The exercise of civil and political rights is also an important factor in the progressive development of conditions in which economic, social and cultural rights may be fully realized, since without political rights there is no guarantee that peoples will be able to live in conditions of freedom, respect for the law and justice, in which it is possible fully to enjoy economic, social and cultural rights.

328. There are certain aspects of economic, social and cultural rights which affect the enjoyment of political rights. This is true of the right to work and to equal remuneration for equal work; the right to form and join trade unions; the right to education; and the right to participate in the cultural life of the community. Full and equal enjoyment of these rights is also indicative of non-discrimination in the exercise of civil and political rights.

Chapter V

THE RIGHT OF PEOPLES FREELY TO PURSUE THEIR ECONOMIC DEVELOPMENT

A. General considerations

329. An essential element of the right of peoples to self-determination is the right freely to pursue their economic development. This right is defined in article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights which provide that, by virtue of their right of self-determination, all peoples "freely pursue their economic [...] development", that they may, "for their own ends, freely dispose of their natural wealth and resources", and that "In no case may a people be deprived of its own means of subsistence".

330. This right has been reaffirmed in various resolutions of United Nations bodies. Thus, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations resolution 2625 (XXV), of 24 October 1970, the General Assembly proclaimed that

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

[...]

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

[...]

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature

[...]

Each State has the right freely to choose and develop its political, social, economic and cultural systems.

331. Likewise, in resolution 3171 (XXVIII) of 17 December 1973, entitled "Permanent sovereignty over natural resources", the General Assembly reaffirmed "the inviolable principle that every country has the right to adopt the economic and social system which it deems most favourable to its development". Furthermore, in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI) of 1 May 1974), one of the principles on full respect for which the new international economic order should be founded, is the following:

(d) The right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result.

332. The "Charter of Economic Rights and Duties of States" (General Assembly resolution 3281 (XXIX) of 12 December 1974), provides in article 1 that

Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

B. Importance of development

333. Development in its various aspects is of great importance for all peoples, whether they are dependent peoples or peoples constituted as sovereign and independent States.

334. So far as dependent peoples are concerned, it should be noted that Chapter XI (Declaration regarding non-self-governing territories), Article 73, of the Charter, states that

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement [...].

This responsibility of the colonial Powers, as well as abuses and failures to respect the rights of dependent people to their development, have been recalled in various resolutions of the General Assembly and other United Nations bodies.

335. The General Assembly has affirmed, in the (Declaration on the granting of independence to colonial countries and peoples (resolution 1514 (XV) of 14 December 1960) that peoples "may, for their own ends, freely dispose of their natural wealth and resources". It has condemned actions directed against the exercise of the right of colonial peoples to pursue their development, such as:

(a) The promotion of the systematic influx of foreign immigrants and the dislocation, deportation and transfer of the indigenous inhabitants" (resolution 2105 (XX) of 20 December 1965, Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples);

(b) "The activities of those foreign financial and economic interests in colonial territories, in particular in South West Africa and Southern Rhodesia [...] which support colonial régimes and thus constitute a serious obstacle to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (resolution 2189 (XXI) of 13 December 1966, Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples);

(c) "Economic or other activity which impedes the implementation of resolution 1514 (XV) and obstructs efforts

aimed at the elimination of colonialism, *apartheid* and racial discrimination in southern Africa and other colonial Territories, violates the political, economic and social rights and interests of the people in those Territories and is therefore incompatible with the purposes and principles of the Charter" (resolution 2703 (XXV) of 14 December 1970);

(d) "The increasingly intensified activities of foreign economic, financial and other interests which continue to exploit the natural and human resources of the colonial Territories and to accumulate and repatriate these profits to the detriment of the interests of the inhabitants [...]" (resolution 3299 (XXIX) of 13 December 1974);

(e) The role played by "foreign economic, financial and other interests" in the exploitation of "the natural and human resources of the colonial Territories [...]" particularly in Southern Africa" (resolution 32/35 of 28 November 1977).

336. The General Assembly has declared that any administering Power, by depriving the colonial peoples of the exercise of their rights, or by subordinating them to foreign economic and financial interests, violates the obligations it has assumed under Chapters XI and XII of the Charter of the United Nations. It has condemned the activities and operating methods of those foreign economic and other interests in the Territories under colonial domination which are designed to perpetuate the subjugation of dependent peoples; deplored the support given by the colonial Powers and other States to those foreign economic and other interests engaged in exploiting the natural and human resources of the Territories without regard to the welfare of the indigenous peoples and obstructing the full and speedy implementation of the Declaration in respect of those territories, and called upon the colonial Powers to review, in accordance with the provisions of the resolution, all the privileges and concessions which are against the interests of the indigenous inhabitants.¹¹⁹

337. In specific cases of territories still under colonial domination, the General Assembly has adopted resolutions confirming economic, financial and technical assistance to those territories. It has expressed its conviction of the urgent necessity for the competent organizations of the United Nations to elaborate concrete programmes and projects of an economic, technical and financial nature destined to assist the newly independent States in their efforts for reconstruction and economic, social and cultural development, and declared itself firmly convinced that this assistance is a responsibility that befalls the international community as a whole and constitutes the natural follow-up of the efforts undertaken by the United Nations in support of the independence of colonial countries and peoples.¹²⁰

338. In article 16 of the "Charter of Economic Rights and Duties of States" adopted by its resolution 3281 (XXIX) of 12 December 1974, the General Assembly proclaimed that:

1. It is the right and duty of all States, individually and collectively, to eliminate colonialism, *apartheid*, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development. States which practise such coercive

policies are economically responsible to the countries, territories and peoples affected for the restitution and full compensation for the exploitation and depletion of, and damages to, the natural and all other resources of those countries, territories and peoples. It is the duty of all States to extend assistance to them.

2. No State has the right to promote or encourage investments that may constitute an obstacle to the liberation of a territory occupied by force.

and in article 32 of the same Charter that:

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

339. The right to development is a matter of steadily growing importance for emerging countries, as well as for newly independent States. For these peoples, according to General Assembly resolution 1527 (XV) of 15 December 1960, entitled "Assistance to former Trust Territories and other newly independent States", there is an "urgent necessity of taking measures to strengthen and consolidate the economic independence of the new and emerging States". The considerable increase in the number of States Members of the United Nations which belong to the under-developed sector of the world economy underlines the urgent need for a steady increase in the level of their development.

340. Through the Charter, the peoples of the United Nations declared themselves determined "to promote social progress and better standards of life in larger freedom" and for these ends "to employ international machinery for the promotion of the economic and social advancement of all peoples". The "Purposes of the United Nations" as established in Article 1 of the Charter are *inter alia* "To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". Chapter IX of the Charter, entitled "International economic and social co-operation", contains two articles, namely, Articles 55 and 56, which are of fundamental importance. They read as follows:

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55

341. In the Final Act of the first Session of the United Nations Conference on Trade and Development, held in 1964, the participating States declared themselves

determined to achieve the high purposes embodied in the United Nations Charter "to promote social progress and better standards of life in larger freedom"; to seek a better and more effective system of international economic co-operation, whereby the division of the world into areas of poverty and plenty may be banished and prosperity achieved by all; and to find ways by which the human

¹¹⁹ See General Assembly resolutions 2288 (XXII), 2425 (XXIII), 2554 (XXIV), 2873 (XXVI), 2279 (XXVII), 3117 (XXVIII), 3299 (XXIX) and 3398 (XXX).

¹²⁰ See General Assembly resolutions 1514 (XV), 2621 (XXV), 3118 (XXVIII) and 3340 (XXIX).

and material resources of the world may be harnessed for the abolition of poverty everywhere.

They asserted that:

In an age when scientific progress has put unprecedented abundance within man's reach, it is essential that the flows of world trade should help to eliminate the wide economic disparities among nations. The international community must combine its efforts to ensure that all countries — regardless of size, of wealth, of economic and social system — enjoy the benefits of international trade for their economic development and social progress.

They recognized that:

Universal peace and prosperity are closely linked and that the economic growth of the developing countries will contribute to the economic growth of the developed countries realizing, the dangers of a widening gulf in living standards between peoples, and convinced of the benefits of international co-operation with a view to helping the developing countries to reach a higher standard of life [...] are resolved, in a sense of human solidarity, "to employ international machinery for the promotion of the economic and social advancement of all peoples".

They affirmed that:

The task of development, which implies a complex of structural changes in the economic and social environment in which men live, is for the benefit of the people as a whole. The developing countries are already engaged in a determined attempt to achieve, by their own efforts, a breakthrough into self-sustaining economic growth which furthers social progress. These efforts must continue and be enlarged. Economic and social progress should go together. If privilege, extremes of wealth and poverty, and social injustice persist, then the goal of development is lost. If the social and cultural dimension of development is ignored, economic advance alone can bring no abiding benefit.¹²¹

342. In the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations; the General Assembly proclaimed that:

[...]

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

[...]

States should co-operate in the economic, social and cultural fields, as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

C. Interdependence of various aspects of development

343. Because of the right of peoples to self-determination, their political, economic, social and cultural rights, and human rights and fundamental freedoms, the various aspects of development are interlinked and interdependent. They are also dependent on international conditions of order, because international peace and security create the possibility of sustained development at all levels.

344. So far as the political aspect of development is concerned, it is obvious that the independence and sovereignty of States, the realization of the political aspirations of peoples, the progressive development of their free political institutions, and respect for fundamental human rights are basic factors of economic, social and cultural development and that, likewise, such development creates the conditions for the political advancement of peoples.

345. The development of peoples and world conditions are mutually interdependent. Economic and social development and international peace and security are closely linked and influence one another, because balanced economic and social development of peoples contributes to the maintenance of international peace and security, while peaceful coexistence, friendly relations and active co-operation among States encourage the economic and social development of peoples. The General Assembly of the United Nations has on many occasions stressed that the success of international development activities depends in large measure on improvement in the general international situation, particularly on concrete progress towards general and complete disarmament, the elimination of colonialism, racial discrimination, *apartheid* and occupation of territories of any State and on the promotion of equal political, economic, social and cultural rights for all members of society (General Assembly resolution 2626 (XXV) of 24 October 1970, entitled "International Development Strategy for the Second United Nations Development Decade").

346. A close link also exists between development and economic and social progress, on the one hand, and the national and international social order on the other, since achievement of the aims of social and economic progress depends fundamentally on internal basic social changes, for the purposes of strengthening national independence, achieving the democratization of society, improving social and economic structures and establishing social justice. Social justice is an issue which claims attention at both the national and the international levels; its object is better distribution of incomes, wealth and social services, the reduction of poverty and the improvement of the living conditions of the population as a whole being more or less universally accepted objectives. Greater social justice presupposes an increased national product and the adoption of specific social and economic policies centred on the distribution of income and wealth. The redistribution of income through transfers and the provision of free or low-cost social services can only be corrective measures in this respect, since primary income distribution is a determining element of the income structure; the principal instruments of greater equality are economic and social measures which act directly on the level of incomes and on the wealth of private individuals and groups, in particular measures bearing on employment and wages, investment, the democratization of wealth, fiscal policy and social welfare. However, public ownership of the means of production, which is practised by an increasing number of countries, remains the decisive factor in achieving equitable distribution of the national income, economic and social democratization and social justice. Economic growth, social and cultural development and social justice are integrated and complementary objectives of the United Nations development strategy; it is obvious, however, that social justice at the national level is linked with international social justice, particularly in the areas of trade, credit and financial aid, prices and the marketing of products. The achievement of international social justice implies a new international economic order, since the existing order is in direct contradiction with the development of political and economic relations in the contemporary world; there is a close correlation between the prosperity of the developed countries and the growth and development of the developing countries, and the prosperity of the international community as a whole is linked to that of its constituent parts. International co-operation for develop-

¹²¹ *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), p. 3.

ment therefore represents the common objective and duty of all countries; in other words, the political, economic and social well-being of present and future generations depends more than ever on the existence among all members of the international community of a spirit of co-operation founded on sovereign equality and the elimination of existing imbalances.

347. The General Assembly has stressed that the strengthening of national independence and the achievement of the ultimate goals of social progress depend fundamentally on internal basic social changes, for purposes of strengthening national independence, achieving the democratization of society and improving social and economic structures, and on the reaffirmation of the principle of the inadmissibility of external interference in any form, including interference by transnational corporations (General Assembly resolution 3273 (XXIX) of 10 December 1974 entitled: "National experience in achieving far-reaching social and economic changes for the purpose of social progress").

348. The various aspects of economic, social and cultural development are interdependent, because the conditions necessary for the well-being of peoples are numerous, varied and linked to one another. The Charter of the United Nations recognizes this correlation in providing that Member States shall promote higher standards of living, full employment, and conditions of economic and social progress and development. The interdependence of economic development and social development has been stressed in a number of General Assembly resolutions. This interdependence also exists in the wider context of the process of growth and change, and this is why the United Nations advocates the adoption of integrated programmes and emphasizes the importance of a strategy of integrated development which takes full account at all stages of its economic and social aspects. This interdependence of economic and social factors has led to the formulation of the concept of balanced economic and social development, the outcome of a complex process determined by the irreconcilability of the approaches of the developing and the developed countries. The idea of the interdependence of economic development and social development and, consequently, the importance of striking a balance between the various aspects and factors of development, is clearly apparent from the year 1957 onwards. Recognition of these facts was assisted, in particular, by United Nations Secretariat studies of the world social situation, which served as the basis for an increasingly realistic evaluation of that situation and helped to draw the necessary conclusions. The Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV) of 11 December 1969) introduced the practically unanimous acceptance of this concept. The Declaration proclaimed the principles, objectives and means of social development; it recognized that the primary responsibility for development rests on the developing countries themselves—which must, to that end, ensure maximum mobilization of their own resources and carry out structural reforms—but that the developed countries have a responsibility to assist them. Social progress is conditioned by economic growth, and this fact emphasizes the interdependence of the economic and social aspects. This is why the Declaration on Social Progress and Development constitutes a real social strategy and an integral part of the global strategy for the Second United Nations Development Decade. The implementation of the United Nations development strate-

gy also entailed acceptance of the wider concept of integrated economic, social and cultural development. The very purpose of the establishment of a new international economic order goes beyond the economic sphere. It consists not only in improving the material living conditions of peoples, but also in the all-round development of men and women as part of a comprehensive process deeply imbued with cultural values and extending to the national environment, social relations, education and welfare. It is on the basis of this broad concept embracing all aspects of development that the International Development Strategy for the Second United Nations Development Decade includes a special section on human development. The principal goal continues to be the reduction of the flagrant inequalities in economic development and social welfare, which have become accentuated between different countries and, in some cases, within countries. Another major goal is the struggle against want, particularly through raising the living conditions of the poorest sectors of the populations of poor countries. That was the spirit of the International Development Strategy which the States Members of the United Nations adopted unanimously in 1970, and such also was the spirit which guided the first review and appraisal of the Strategy. The human individual must be the central element of the development process; he is the essential factor in comprehensive economic and social development directed towards the satisfaction of his ever-growing and continuously diversified vital needs. The human personality must assert itself untrammelled at all levels. The over-all objective of development is to create general and equal social conditions for all individuals, so that they may achieve fulfilment as distinct personalities in accordance with their possibilities and capacities.

D. Development, the principal individual and shared responsibility of States

349. The primary responsibility for promoting the development of the people of a State rests with the latter, which, by virtue of its sovereignty, has the right and the responsibility to choose its means and goals of development, fully to mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the process and benefits of development. At a time when economic interdependence among States is becoming more pronounced and no country can remain apart from world-wide economic processes, it is an objective necessity that all States, whatever their social régime, their territorial size or their economic potential, should actively contribute towards solving the great economic problems with which the world is now faced and towards the development of peoples.

350. These principles have been embodied in resolutions of the General Assembly, and new concepts, such as that of collective economic security, have emerged in the process.

351. In the International Development Strategy for the Second United Nations Development Decade, contained in its resolution 2626 (XXV) of 24 October 1970, the General Assembly stressed that

[...] economic and social progress is the common and shared responsibility of the entire international community. It is also a process in which the benefits derived by the developing countries from the developed countries are shared by the world as a whole. Every country has the right and duty to develop its human and

natural resources, but the full benefit of its efforts can be realized only with concomitant and effective international action.

The primary responsibility for the development of developing countries rests upon themselves, as stressed in the Charter of Algiers^{*}; but, however great their own efforts, these will not be sufficient to enable them to achieve the desired development goals as expeditiously as they must unless they are assisted through increased financial resources and more favourable economic and commercial policies on the part of developed countries.

^{*} See *Proceedings of the United Nations Conference on Trade and Development, Second Session*, vol. I and Corr.1 and 3 and Add.1 and 2, *Report and Annexes* (United Nations publication, Sales No.: E.68.II.D.14), p. 431.

352. In the Declaration on the Establishment of a New International Economic Order the General Assembly emphasized the reality of the interdependence of all the members of the world community and pointed out that:

[...] the interests of the developed countries and those of the developing countries can no longer be isolated from each other, that there is a close interrelationship between the prosperity of the developed countries and the growth and development of the developing countries, and that the prosperity of the international community as a whole depends upon the prosperity of its constituent parts. International co-operation for development is the shared goal and common duty of all countries. Thus the political, economic and social well-being of present and future generations depends more than ever on co-operation between all the members of the international community on the basis of sovereign equality and the removal of the disequilibrium that exists between them.

353. These ideas have been reaffirmed in a number of General Assembly resolutions, in particular resolutions 3362 (S-VII) entitled "Development and international economic co-operation" of 16 September 1975 and 3281 (XXIX) entitled "Charter of Economic Rights and Duties of States" of 12 December 1974; as well as in the Economic Declaration¹²² adopted by the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973, and in the Declaration (Manila Declaration)¹²³ adopted by the Third Ministerial Meeting of the Group of 77, held at Manila from 26 January to 7 February 1976.

354. The elimination of under-development is a global issue whose solution concerns all peoples; on it depends the future of the entire international community. Enormous differences in growth, the parallel existence on our planet of the phenomena of over-development, over-consumption of raw materials and over-nourishment in some countries and of under-development, under-consumption and under-nourishment in the majority of countries of the world and the development of certain countries at the expense of others constitute a flagrant injustice and an anachronism that is unacceptable at a time when science and technology have placed within man's reach powerful means of mastery over nature.

355. The elimination of under-development is not only an ethical duty and an imperative of justice; it is also, and more particularly, the expression of the general interest of peoples at many levels. Thus, at the political level, the maintenance of world peace and security cannot be assured so long as the existing inequitable structures remain in place. From the economic viewpoint, under-development and imbalances in the world system are giving rise to new and greater crises and to confrontation in all countries.

The elimination of under-development is, in the last analysis, both a first step in, and the outcome of, increased economic, social, scientific and technological development on a world scale. Under-development, the division of the world into developed and under-developed areas, rich and poor countries, constitutes a grave anomaly in the contemporary world and is a consequence of imperialist and colonialist policies. This situation leads to mutual distrust and to economic and political unrest. In the light of these considerations, it will be seen that the elimination of under-development is a complex problem on whose solution progress and peace throughout the world depend. Without the elimination of this situation and without the rapid development of the under-developed countries, it will be impossible to ensure viable co-operation based on genuine equality among peoples.

356. The elimination of under-development is not a final goal but an intermediate stage; it must ensure a reasonable standard of living for all peoples by putting an end to the division of the world into developed and under-developed areas and rich and poor countries and by generally closing the gap between levels of economic development. For many peoples which have recently acceded to national independence, independent economic, social and political development constitutes a basic objective. The path towards the attainment of this basic objective leads first and foremost through the intensification of these countries' own efforts, the total mobilization of their material and human potential, and the concentration and co-ordination of the efforts of every people and every nation.

357. Economic and social development can be neither exported nor imported. It presupposes taking into consideration numerous economic, technical and social parameters and establishing priorities and setting growth rates on the basis of a knowledge of needs, conditions and external possibilities. It presupposes the participation of the entire people inspired by a common ideal, and individual and collective creativity in devising the most adequate solutions to problems arising from local conditions, needs and aspirations. State organization forms an irreplaceable framework for such development, and the peoples and nations are one of its great driving forces. The people and the State can organize development efficiently only if they exercise full sovereignty in the choice of their form of social and political organization, the harnessing of natural resources, the choice of the way to development, the directions and rates of economic and social development, and the conditions of participation in international trade.

358. The strategy for rapid economic and social progress, based on a people's own efforts, cannot be deduced from single models or rigid formulae; it must be drawn up in the light of national conditions and characteristics and must incorporate, besides specific solutions, each country's own ways of approaching these realities. At the same time, economic, scientific, technical and social progress in the contemporary world is of such a nature that all national development models share certain general characteristics, which include the following:

(a) Rapid economic and social progress calls for structures and institutions capable of enlisting the creative participation of the people. It calls for a fair distribution of benefits and for concentration of effort along certain principal lines.

¹²² See A/9330 and Corr.1, pp. 57-74.

¹²³ See *Proceedings of the United Nations Conference on Trade and Development, Fourth Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.76.II.D.10), pp. 133 *et seq.*

(b) The goals of development must be the creation of a national economic system, a unified and harmonious system of industrial sectors and subsectors (industry being vital for a better utilization of resources), efficient participation in international trade, and the maximum growth of the national income.

(c) A large part of the nation's resources must be constantly reinvested over a long period, with a view to promoting development. Each country must establish its own educational and research systems on the basis of the specific requirements of social production.

359. These requirements must be taken into consideration if rapid development is to be achieved from internal sources, a country's own efforts being a factor of prime importance in the elimination of under-development, which will lead to economic independence.

360. Such economic independence, the premise for which is the full exercise of sovereignty, finds its expression in a development determined from within and has nothing in common with autarky. Such development under conditions of economic independence does not exclude but, on the contrary, requires active participation in international trade and co-operation with other States in solving regional or global problems. The development of interdependences is an inevitable process. The great potentials of progress will become realities if a new international economic order transforms the national economies of States into fundamental elements of general economic and social progress.

361. The elimination of under-development and the narrowing and eventual closing of the gap between levels of economic development of States require an international environment favourable to each country's own efforts, i.e. an equitable international system operating in such a way as to narrow and eventually close the gap between the levels of economic development of States, ensure the rapid progress of all peoples and generally improve the quality of life on our planet.

362. The new international economic order calls for the harmonization of national policies and the establishment of national priorities, bearing in mind the international dimension, jointly agreed principles and aims, specific programmes adopted by the United Nations and the fulfilment by all States of international obligations undertaken within that framework.

363. A new international economic order and the organizing of interdependence in the light of the goals of equity, humanism, and the economic and ecological balance of the international economic system, call for global solutions and corresponding mechanisms in a world based on international democracy. Equality and equity will be the result of the exercise of national sovereignty based on the enhancement of the role of the United Nations as an efficient instrument for predicting and dealing on a world scale with the great development problems created by the growing interdependence of peoples. Within this international order, every State and every people will keep its sovereign prerogative of choosing the direction of its economic, political, social and cultural development and pursue its autonomous development in a world of interdependent States and peoples. Joint international decisions are based on national options, on national priorities chosen with a view to preserving national characteristics, satisfying national aspirations and increasing every people's contribution to general progress.

364. Since national efforts constitute the prime factor of development, international assistance must help these efforts; it must be placed within the context of national programmes and must be granted on a non-discriminatory basis and without political conditions in a form suited to each country's conditions and needs. The granting of such assistance must be based on selective criteria that give priority to the poorest countries.

365. The elimination of the effects of under-development and the existing differences between the economic levels of States is one of the principal objectives of the establishment of a new international economic order. Although this problem has been on the agenda for a long time and has formed the subject of many resolutions and declarations adopted within the United Nations and other international organizations, the necessary practical measures have not as yet been taken. In consequence, the economic gap has steadily widened, a fact which gravely threatens general economic development and contributes to the decline of world markets and to the economic crisis and also has repercussions on the industrially-developed States. This state of affairs gives rise to tensions and animosities and creates a danger of increased political instability and international tension, thus gravely imperilling world peace.

E. Early instances of United Nations concern with the development of developing countries

366. Since the earliest years of the existence of the United Nations, the international community has been aware of the need for the development of the under-developed countries. This concern of the United Nations was reflected in resolutions on the economic development of under-developed countries, methods to increase world productivity, the activities of the regional economic commissions, the bases of international economic co-operation and world economic development. In the early 1960s, when, as a result of the decolonization process, a large number of States had become Members of the United Nations, the need for concerted action towards the economic development of the economically less developed countries became evident and was recognized in resolutions of the General Assembly. Thus, the Assembly noted that low standards of living existing in certain Member States led to undesirable economic and social consequences for the countries directly concerned and for the world at large, causing an instability which obstructed the maintenance of peaceful and friendly relations between nations and the development of the necessary conditions for economic and social progress. It recommended that the Economic and Social Council should continue to give urgent attention to the problems of the economic development of under-developed countries, giving due consideration to questions of a social nature which directly condition economic development.

367. The General Assembly considered that an expansion of the world economy in the interest of raising living standards required the rapid economic development of the under-developed countries, and that such an expansion depended upon the growth of production of vitally needed goods and services in all parts of the world; it expressed the belief that an important increase in the rate of growth of world production could be achieved by the application of the latest available scientific knowledge to techniques or production, and took account of the fact that the optimum

combination of human, natural and capital resources was likely to vary depending on the relative abundance or scarcity of those resources.

368. The General Assembly declared that the economic development of under-developed countries, consistent with the objectives set forth in Article 55 of the Charter of the United Nations, namely, the promotion of "higher standards of living, full employment and conditions of economic and social progress and development", could best be carried out through co-ordination among the countries of a region and among the various regions.

369. The General Assembly adopted the following declaration:

We, the governments of the States Members of the United Nations, in order to promote higher standards of living and conditions of economic and social progress and development, stand ready to ask our peoples, when sufficient progress has been made in internationally supervised world-wide disarmament, to devote a portion of the savings achieved through such disarmament to an international fund, within the framework of the United Nations, to assist development and reconstruction in under-developed countries.

370. The General Assembly pointed out that the long-term progress of the world presented problems of resources, requirements and production methods, affecting nations in all stages of development and calling for the widest international co-operation and action; it emphasized the increasing needs of a rapidly growing world population, and its rising social and economic expectations; recognized the urgent necessity of correcting economic and social imbalances existing in the world; noted that the growing pace of industrialization and the rapid advance of science and technology necessitated a fresh approach to the question of the demand for, and the supply of, raw materials and other means of production; and expressed the belief that the social and economic needs of under-developed countries required a comprehensive approach to the economic problems of the world.

371. The General Assembly affirmed that it was a prime duty of the United Nations to accelerate the economic and social advancement of the less developed countries of the world, thus contributing to safeguarding their independence and helping to close the gap in standards of living between the more developed and the less developed countries; recognized that this social and economic advancement required the development and diversification of economic activity, that is, the improvement of conditions for the marketing and production of foodstuffs and the industrialization of those economies which are largely dependent on subsistence agriculture or on the export of a small range of primary commodities; and expressed the belief that the achievement of those ends demanded, *inter alia*: (a) The maintenance of a high and expanding level of economic activity and of generally beneficial multilateral and bilateral trade free from artificial restrictions, in order to enable the less developed countries and those dependent on the export of a small range of primary commodities to sell more of their products at stable and remunerative prices in expanding markets, and so increasingly to finance their own economic development from their earnings of foreign exchange; (b) The increasing provision of public and private capital on acceptable terms from the more developed to the less developed countries, notably through international organizations and through freely negotiated multilateral or bilateral arrangements; (c) The expansion of technical co-operation between countries

at all stages of development, with the objective of aiding the people of under-developed countries to increase their knowledge of, and capacity to apply, modern techniques; (d) Scientific and cultural co-operation and the encouragement of research; (e) Proper regard for the human and social aspects of economic development.

F. The first United Nations Development Decade

372. The first United Nations Development Decade was proclaimed by the General Assembly as a programme for international economic co-operation. At its sixteenth session, the General Assembly, in its resolution 1710 (XVI) of 19 December 1961, emphasized that the economic and social development of the economically less developed countries was not only of primary importance to those countries but was also basic to the attainment of international peace and security and to a faster and mutually beneficial increase in world prosperity, and noted that in spite of the efforts made in recent years the gap in *per capita* incomes between the economically developed and the less developed countries had increased and the rate of economic and social progress in the developing countries was still far from adequate. The General Assembly declared itself convinced of the need for concerted action to demonstrate the determination of Member States to give added impetus to international economic co-operation in the current decade, through the United Nations system and on a bilateral or multilateral basis. In consequence, it designated the decade as the United Nations Development Decade, in which Member States and their peoples would intensify their efforts to mobilize and sustain support for the measures required on the part of both developed and developing countries to accelerate progress towards self-sustaining growth of the economy of the individual nations and their social advancement, so as to attain in each under-developed country a substantial increase in the rate of growth, with each country setting its own target, taking as the objective a minimum annual rate of growth of aggregate national income of 5 per cent at the end of the decade. It called upon States Members of the United Nations and members of the specialized agencies: (a) To pursue policies designed to enable the less developed countries and those dependent on the export of a small range of primary commodities to sell more of their products at stable and remunerative prices in expanding markets, and thus to finance increasingly their own economic development from their earnings of foreign exchange and domestic savings; (b) To pursue policies designed to ensure to the developing countries an equitable share of earnings from the extraction and marketing of their natural resources by foreign capital, in accordance with the generally accepted reasonable earnings on invested capital; (c) To pursue policies that would lead to an increase in the flow of development resources, public and private, to developing countries on mutually acceptable terms; (d) To adopt measures which would stimulate the flow of private investment capital for the economic development of the developing countries, on terms satisfactory both to the capital-exporting countries and the capital-importing countries.

373. Proposals were to be developed for the intensification of action in the fields of economic and social development by the United Nations system of organizations, with particular reference, *inter alia*, to the following approaches and measures: (a) The achievement and acceleration of sound self-sustaining economic development in the less

developed countries through industrialization, diversification and the development of a highly productive agricultural sector; (b) Measures for assisting the developing countries, at their request, to establish well-conceived and integrated country plans—including, where appropriate, land reform—which would serve to mobilize internal resources and to utilize resources offered by foreign sources on both a bilateral and a multilateral basis for progress towards self-sustained growth; (c) Measures to improve the use of international institutions and instrumentalities for further economic and social development; (d) Measures to accelerate the elimination of illiteracy, hunger and disease, which seriously affect the productivity of the people of the less developed countries; (e) The need to adopt new measures, and to improve existing measures, for further promoting education in general and vocational and technical training in the developing countries with the co-operation, where appropriate, of the specialized agencies and States which can provide assistance in these fields, and for training competent national personnel in the fields of public administration, education, engineering, health and agronomy; (f) The intensification of research and demonstration, as well as other efforts to exploit scientific and technological potentialities of high promise for accelerating economic and social development; (g) Ways and means of finding and furthering effective solutions in the field of trade in manufactures, as well as in primary commodities, bearing in mind, in particular, the need to increase the foreign exchange earnings of the under-developed countries; (h) The need to review facilities for the collection, collation, analysis and dissemination of statistical and other information required for charting economic and social development and for providing a constant measurement of progress towards the objectives of the Decade; (i) The utilization of resources released by disarmament for the purpose of economic and social development, in particular of the under-developed countries; (j) The ways in which the United Nations could stimulate and support realization of the objectives of the Decade through the combined efforts of national and international institutions, both public and private. The General Assembly invited the Economic and Social Council to accelerate its examination of, and decision on, principles of international economic co-operation directed towards the improvement of world economic relations and the stimulation of international co-operation.

374. At its twentieth session, the General Assembly considered that at the mid-point of the first United Nations Development Decade the rate of economic and social progress in the developing countries was still far from satisfactory (see resolution 2084 (XX) of 20 December 1965).

375. At its twenty-first session, the General Assembly recalled, in its resolution 2218 (XXI) A of 19 December 1966, the high hopes raised by the proclamation, at its sixteenth session, of the United Nations Development Decade, the first world-wide effort to give concrete form to the solemn undertaking embodied in the Charter of the United Nations to promote economic and social progress and better standards of life in larger freedom. At the same time, it endorsed Economic and Social Council resolution 1152 (XLI) of 4 August 1966, in which the Council, noting that progress during the United Nations Development Decade had been disappointingly slow, recommended a survey of the preparations required in order to further and facilitate planning for concerted international action for a

period following the Decade, having regard to the experience gained. It noted with concern (resolution 2218 (XXI) B, of 19 December 1966) that the progress made so far did not offer sufficient assurance that the modest targets of the first United Nations Development Decade would be attained by the end of the Decade. It realized that one of the reasons for the slow progress in achieving the modest targets set for the first United Nations Development Decade had been the absence of a framework for an international development strategy, and considered that it was necessary to look ahead to the next decade, so that concerted international action would be taken for the accelerated social and economic development of the developing countries in the light of the experience gained during the present decade. It recognized the need to delineate guidelines and general objectives for the next decade and to define in more precise quantitative terms the goals and targets for the development of human and natural resources, and further recognized that greater substance could be given to those goals and targets by defining the requirements that had to be met for their realization, with due regard to the principle that the choice of appropriate policies was a matter for decision by national Governments, and that, consequently, the formulation of specific and realistic goals and targets could provide a world perspective within which individual countries could plan their development and enable appropriate international action to be taken in support of the efforts made at the national and regional levels.

376. At its twenty-second session, the General Assembly, in its resolution 2305 (XXII), of 13 December 1967, reaffirmed that the possibility and advisability of proclaiming a charter of development underlying international co-operation in the interests of economic, social and cultural development deserved further consideration, and also that it was necessary to look ahead to the next decade, so that concerted international action would be taken for the accelerated social and economic development of the developing countries in the light of the experience gained during the first United Nations Development Decade and with due regard to safeguarding those countries' economic interests.

G. The International Development Strategy

377. By comparison with the results of the first United Nations Development Decade, the International Development Strategy proclaimed by the General Assembly at its twenty-fifth session was an important step forward in the international community's realization of development needs and in the elaboration of measures to meet them. The Strategy was a result of the international community's concern at the fact that, in spite of the efforts made during the first United Nations Development Decade, the standard of living of millions of human beings in the developing part of the world was still pitifully low. It was also recognized that there was an urgent need to strengthen political will, particularly in the sphere of international co-operation, if the work of development was to go forward successfully. The international community had become aware of its responsibilities, and resolved to strive unremittingly to bring about a substantial improvement in man's lot by hastening the economic and social advancement of the developing countries and thereby contributing to world peace.

378. The General Assembly, in resolution 2626 (XXV) of 24 October 1970 entitled "International Development

Strategy for the Second United Nations Development Decade", proclaimed the Second United Nations Development Decade starting from 1 January 1971, and expressed the conviction of Governments that development was the path to peace and justice, and their common and unswerving resolve to seek a better and more effective system of international co-operation whereby the prevailing disparities in the world might be banished and prosperity secured for all. The General Assembly emphasized that:

[...]

(7) The ultimate objective of development must be to bring about sustained improvement in the well-being of the individual and bestow benefits on all. If undue privileges, extremes of wealth and social injustices persist, then development fails in its essential purpose. This calls for a global development strategy based on joint and concentrated action by developing and developed countries in all spheres of economic and social life: in industry and agriculture, in trade and finance, in employment and education, in health and housing, in science and technology.

(8) The international community must rise to the challenge of the present age of unprecedented opportunities offered by science and technology, in order that the scientific and technological advances may be equitably shared by developed and developing countries, thus contributing to accelerated economic development throughout the world.

(9) International co-operation for development must be on a scale commensurate with that of the problem itself. Partial, sporadic and half-hearted gestures, howsoever well intentioned, will not suffice.

(10) Economic and social progress is the common and shared responsibility of the entire international community. It is also a process in which the benefits derived by the developing countries from the developed countries are shared by the world as a whole. Every country has the right and duty to develop its human and natural resources, but the full benefit of its efforts can be realized only with concomitant and effective international action.

(11) The primary responsibility for the development of developing countries rests upon themselves, as stressed in the Charter of Algiers;* but, however great their own efforts, these will not be sufficient to enable them to achieve the desired development goals as expeditiously as they must unless they are assisted through increased financial resources and more favourable economic and commercial policies on the part of developed countries.

* *Proceedings of the United Nations Conference on Trade and Development, Second Session*, vol. I and Corr.1 and 3 and Add.1 and 2, *Report and Annexes* (United Nations publication, Sales No. E.68.II.D.14), p. 431.

(12) Governments designate the 1970s as the Second United Nations Development Decade and pledge themselves, individually and collectively, to pursue policies designed to create a more just and rational world economic and social order in which equality of opportunities should be as much a prerogative of nations as of individuals within a nation. They subscribe to the goals and objectives of the Decade and resolve to take the measures to translate them into reality. These aims and measures are set out in the following paragraphs.

379. A number of subsequent resolutions of the General Assembly stressed that the International Development Strategy should be viewed in a dynamic perspective and that it should consequently be the subject of a continuing review to ensure its effective implementation and adjustment to change. They also stated that through the intensive dissemination of information on the objectives and policy measures of the International Development Strategy in both developed and developing countries a favourable world public opinion would be achieved that would help to promote and ensure the implementation of the goals and measures set forth in the Strategy. The General Assembly expressed its conviction that a favourable public opinion at the national, regional and global levels could have a persuasive influence and infuse dynamism into the review and

appraisal of the progress achieved in the implementation of the objectives and policies of the International Development Strategy.

380. At its twenty-eighth session, the General Assembly undertook the first biennial over-all review and appraisal of progress in the implementation of the International Development Strategy for the Second United Nations Development Decade (Resolution 3176 (XXVIII), of 17 December 1973), for the purpose in particular of assessing over-all trends and progress in achieving integrated economic and social development. The assessment revealed that the experience of the first two years of implementation of the Strategy gave cause for grave concern. The balance-sheet for those years showed that development problems, far from being solved, were becoming increasingly acute and that in many cases there had been a setback in comparison with the situation prevailing in the latter part of the previous decade. The average annual rate of growth of the gross domestic product of the developing countries during the first two years of the Second Development Decade approximated to an annual average of 5.5 per cent, which was also the average of the first United Nations Development Decade (1961-1970). This was still some 10 per cent below the 6 per cent target for the Second Development Decade. Furthermore, in many developing countries, redistribution of income had not progressed rapidly enough; unemployment continued to loom large; health and educational facilities were far short of needs; housing shortages remained acute and malnutrition was widespread. All those elements exacerbated the problem of mass poverty in many developing countries, and the International Development Strategy thus remained much more a wish than a policy, and had not yet taken hold with anything like the force needed. Moreover, the attitude of some developed countries, and the unacceptable practices of transnational corporations that infringed the principle of the sovereignty of developing countries, had not helped to create a situation suitable for the purposes of the International Development Strategy. In order to offset the shortfalls in achieving the goals and objectives of the Strategy, the General Assembly advocated the adaptation of existing measures and the formulation of new ones, which should be taken by the developing and developed countries alike, and by the international community, on the basis of respect for the inalienable and undeniable principle that each country has the right to adopt the economic and social régime it considers appropriate for its advancement, to reaffirm the vital importance of the full exercise of national sovereignty over natural resources and the right of each State to exercise control over them and exploit them in accordance with the interests of the country.

381. At its thirtieth session, the General Assembly carried out the mid-term review and appraisal of progress in the implementation of the International Development Strategy for the Second United Nations Development Decade (resolution 3517 (XXX), of 15 December 1975) in the light of the Declaration and the Programme of Action on the Establishment of a New International Economic Order (resolutions 3201 (S-VI) and 3202 (5-VI), of 1 May 1974, and of the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX) of 12 December 1974), which laid the foundations of the new international economic order. On that occasion, the General Assembly found, in essence, that the situation of the developing countries had been further

exacerbated by the economic recession in the developed market economies, combined with the acceleration of the pace of inflation, and that, on the one hand, during the first half of the decade, an alarming increase had occurred in the gap between developed and developing countries, while, on the other, an irreversible and most promising change had taken place in the relationship of forces in the world, characterized by the increasing influence of the developing countries. The developed countries had, by and large, failed to implement the measures envisaged in the International Development Strategy; indeed, there had been some retrogression in that respect. The inadequate implementation of the measures embodied in the Strategy, compounded with a continuing economic crisis, had produced the most discouraging results with minimal progress in the advancement of the cause of development. The fact that some of the aggregate targets set in the International Development Strategy were met or exceeded was mainly due to the developing countries' own efforts and, to a certain extent, to external factors. The General Assembly advocated new measures such as the institution of a more balanced and equitable system of international economic relations to be promoted by efforts to adjust the present pattern of world trade in favour of the developing countries, so as to increase their participation therein and to reduce to a minimum the negative impact of economic fluctuations; to provide resources from developed countries to supplement the efforts of the developing countries to diversify their economies; to make intensive research and development efforts designed to improve market conditions and cost efficiency and to diversify the end uses of natural products facing competition from synthetics and substitutes; to give financial and technical assistance directed exclusively towards promoting the economic and social progress of developing countries; to pursue discussions and negotiations vigorously, with a view to making arrangements for the transfer of resources to stabilize and improve the export earnings of developing countries; to co-operate within the framework of the Commission on Transnational Corporations with a view to formulating, adopting and implementing an international code of conduct; to mobilize the domestic resources of the developing countries; to facilitate the role to be played by producers' associations within the framework of international corporations and, in pursuance of their aims, to promote the sustained growth of the world economy and accelerate the development of the developing countries.

382. Gravely concerned that international economic relations were facing severe problems and that the economic disparities between the developed and the developing countries had further widened, and conscious of the need to introduce profound changes in economic relations between the developed and developing countries, the General Assembly decided at its thirty-first session (resolution 31/182, of 21 December 1976) to collect data and information that were relevant to the formulation of the new international development strategy, taking fully into account its resolutions on the establishment of a new international economic order. In the study entitled *The Future of the World Economy*, the International Development Strategy, its implementation and results are evaluated as follows, in global terms and with regard to the prospects for the future:

Summary

The findings of this study can be briefly summarized as follows:

(a) Target rates of growth of gross product in the developing regions, set by the International Development Strategy for the Second United Nations Development Decade, are not sufficient to start closing the income gap between the developing and the developed countries. Higher growth rates in developing countries in the 1980s and 1990s, coupled with slightly lower rates in the developed countries (as compared to their long-term trends), are needed to reduce, at least by half, the average income gap by 2000;

(b) The principal limits to sustained economic growth and accelerated development are political, social and institutional in character rather than physical. In the twentieth century no insurmountable barriers to the accelerated development of the developing regions exist.¹²⁴

H. The new international economic order

383. Economic and social development involves many complex problems which differ from country to country and from region to region. There is, however, one major problem which is common to all the poor countries of the world, namely the present system of international economic relations, which always militates against their interests and nullifies every effort made to close the gap between the rich and poor countries of the world. The system tends in fact to widen the gap, depriving the poor countries of the right to be heard on international economic questions which are of vital interest to them. World monetary and trade policies are decided without sufficient attention being paid to the interests of these countries, because their natural resources are exploited without their populations deriving the benefit to which they are entitled. Their economies therefore serve foreign interests rather than their own. Foreign markets for their products are limited and their principal exports are subject to unpredictable price fluctuations. The resources of science and technology are, throughout the world, employed in raising the standard of living of the rich and even where they could be applied to solving the problems of the poor, the price demanded is prohibitive. The developed countries have profited from centuries of exploitation of the labour and natural resources of the under-developed countries. Much of the progress made by the developed countries has been and still is being paid for by the poor countries and this is a debt which should be paid, not only through provision of aid, but by a change in the outdated and unjust international economic order. Under the existing system, the aid granted to the developing countries has been more than outweighed by the inadequate prices of the products which these countries have sold to the developed countries. The developing countries cannot continue to assist the developed countries to live beyond their means.

384. The general lines on which the system should be modified were laid down by the General Assembly of the United Nations in two historic decisions in 1974, the Declaration and the Programme of Action on the Establishment of a New International Economic Order, which were adopted by the General Assembly at its sixth special session (resolutions 3201 (S-VI) and 3202 (S-VI)).

385. At its twenty-eighth session, the General Assembly in its resolutions 3172 (XXVIII) of 17 December 1973, recognized the need fully to study and review the general status of international development co-operation, and also the growth of interdependence in the world economy and

¹²⁴ W. Leontief and others, *The Future of the World Economy, A United Nations Study* (New York, Oxford University Press, 1977), pp. 10-11.

the urgent need for international co-operation to be adapted to the requirements of economic and social development throughout the world, particularly in the developing countries. It expressed concern at the growing gap between the developed and developing countries and at the slow rate of progress in the implementation of the goals and objectives of the International Development Strategy and, noting that the Fourth Conference of Heads of State or Government of the Non-Aligned Countries, held at Algiers from 5 to 9 September 1973, had called for the convening of a special session of the General Assembly devoted exclusively to development problems, decided to hold a special session of the General Assembly at a high political level on an appropriate date just before the thirtieth regular session, for the purpose of examining the political and other implications of the state of world development and international economic co-operation, expanding the dimensions and concepts of world economic and developmental co-operation and giving the goal of development its rightful place in the United Nations system and on the international stage. The General Assembly decided that it would consider during its special session, in the light of the implementation of the International Development Strategy for the Second United Nations Development Decade, new concepts and options with a view to promoting effectively the solution of world economic problems, in particular those of developing countries, and would assist in the evolution of a system of world economic relations based on the equality and common interests of all countries. The Assembly further decided to initiate the necessary and appropriate structural changes to make the United Nations system a more effective instrument of world economic co-operation and for the implementation of the International Development Strategy.

386. The General Assembly adopted at its sixth special session the Declaration on the Establishment of a New International Economic Order, in which the Members of the United Nations, bearing in mind the spirit, purposes and principles of the Charter of the United Nations to promote the economic advancement and social progress of all peoples, solemnly proclaimed their united determination to work urgently for the establishment of a new international economic order based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems, which should correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations. They emphasized that the greatest and most significant achievement during the last decade had been the independence from colonial and alien domination of a large number of peoples and nations, which had enabled them to become members of the community of free peoples. Technological progress had also been made in all spheres of economic activities in the last three decades, thus providing a solid potential for improving the well-being of all peoples. However, the remaining vestiges of alien and colonial domination, foreign occupation, racial discrimination, *apartheid* and neo-colonialism in all its forms continued to be among the greatest obstacles to the full emancipation and progress of the developing countries and all the peoples involved. The benefits of technological progress had not been shared equitably among all members of the international community. The developing countries, which constituted 70 per cent

of the world's population, accounted for only 30 per cent of the world's income. It had proved impossible to achieve an equal and balanced development of the international community under the existing international economic order. The gap between the developed and the developing countries continued to widen in a system which had been established at a time when most of the developing countries had not even existed as independent States and which perpetuated inequality. They also considered that the present international economic order was in direct conflict with current developments in international political and economic relations. Since 1970, the world economy had experienced a series of grave crises which had had severe repercussions, especially on the developing countries because of their generally greater vulnerability to external economic impulses. The developing world had become a powerful factor that made its influence felt in all fields of international activity. The irreversible changes in the relationship of forces in the world necessitated the active, full and equal participation of the developing countries in the formulation and application of all decisions that concerned the international community. All those changes had thrust into prominence the reality of the interdependence of all members of the world community. Current events had brought into sharp focus the realization that the interests of the developed countries and those of the developing countries could no longer be isolated from each other, that there was a close interrelationship between the prosperity of the developed countries and the growth and development of the developing countries, and that the prosperity of the international community as a whole depended upon the prosperity of its constituent parts. International co-operation for development was the shared goal and common duty of all countries. That meant that the political, economic and social well-being of present and future generations depended more than ever on co-operation between all the members of the international community on the basis of sovereign equality and the removal of the disequilibrium that existed between them.

387. The Declaration further outlined the principles on which the new international economic order should be founded. It stated that the unanimous adoption of the International Development Strategy for the Second United Nations Development Decade was an important step in the promotion of international economic co-operation on a just and equitable basis. The accelerated implementation of obligations and commitments assumed by the international community within the framework of the Strategy, particularly those concerning imperative development needs of developing countries, would contribute significantly to the fulfilment of the aims and objectives of the Declaration. The United Nations, as a universal organization, should be capable of dealing with problems of international economic co-operation in a comprehensive manner and ensuring equally the interests of all countries. It should have an even greater role in the establishment of a new international economic order. The Charter of Economic Rights and Duties of States, for the preparation of which the Declaration would provide an additional source of inspiration, constituted a significant contribution in that respect. All the States Members of the United Nations were therefore called upon to exert the maximum efforts, with a view to securing the implementation of the Declaration, which was one of the principal guarantees for the creation of better conditions for all peoples to secure a life worthy of human dignity. The Declaration on the Establishment of a New International

Economic Order was one of the most important bases of economic relations between all peoples and all nations.

388. The Programme of Action on the Establishment of a New International Economic Order, adopted by the General Assembly at its sixth special session, contained the measures recommended by the General Assembly to be taken in the following fields: (a) Fundamental problems of raw materials and primary commodities as related to trade and development; (b) International monetary system and financing of the development of developing countries; (c) Industrialization; (d) Transfer of technology; (e) Regulation and control over the activities of transnational corporations; (f) Charter of Economic Rights and Duties of States; (g) Promotion of co-operation among developing countries; (h) Assistance in the exercise of permanent sovereignty of States over natural resources; (i) Strengthening the role of the United Nations system in the field of international economic co-operation; (j) Special Programme. Both the Declaration and the Programme of Action constitute, in the opinion of the great majority of the States Members of the United Nations, a new framework for the United Nations International Development Strategy for the 1980s.

389. The General Assembly reiterated at its seventh special session (resolution 3362 (S-VII) of 16 September 1975), its determination to eliminate the injustice and inequality which afflict vast sections of humanity and to accelerate the development of developing countries. It emphasized that greater co-operation among States in the fields of trade, industry, science and technology, as well as in other fields of economic activities, based on the principles of the Declaration and the Programme of Action on the Establishment of a New International Economic Order and of the Charter of Economic Rights and Duties of States, would also contribute to strengthening peace and security in the world. Believing that the over-all objective of the new international economic order was to increase the capacity of developing countries, individually and collectively, to pursue their development, the General Assembly decided, to that end, to set in motion measures in the fields of international trade, the transfer of real resources for financing the development of developing countries and international monetary reform, science and technology, industrialization, food and agriculture, co-operation among developing countries and the restructuring of the economic and social sectors of the United Nations system so as to provide a foundation and a framework for the work of the competent organs and agencies of the United Nations.

390. The General Assembly at its thirtieth session (resolution 3506 (XXX) of 15 December 1975) declared itself convinced of the need to achieve concrete results through the effective implementation of such measures and through the adoption of complementary actions in all competent forums and expressed its determination to keep under constant review the negotiations and decisions to be taken in other forums on international economic co-operation and development. It urged all States to implement promptly the policy measures adopted at its seventh special session and requested all organizations, institutions and subsidiary organs of the United Nations system to assign the highest priority to the implementation of the measures set out in General Assembly resolution 3362 (S-VII) and to submit progress reports to the Assembly, through the Economic and Social Council, within their respective fields of competence. The General Assembly also stated in its resolution

3508 (XXX), of 15 December 1975, that an examination of the long-term trends in the economic development of individual regions was of great importance for securing a rapid rate of economic development of all countries, in particular of developing countries, and that such an examination would also contribute to the elimination of the negative phenomena in the economies of those countries and regions.

391. In the Declaration on the Deepening and Consolidation of International Détente (General Assembly resolution 32/155 of 19 December 1977), the States Members of the United Nations proclaimed their determination:

[...] To work towards the establishment and development of just and balanced economic relations among States and to strive to narrow the gap between the developed and developing countries, in accordance with the resolutions of the General Assembly adopted by consensus at its sixth and seventh special sessions on the establishment of the new international economic order.

392. The General Assembly, in a resolution on the assessment of the progress made in the establishment of a new international economic order (resolution 32/174 of 19 December 1977), expressed its deep concern at the deteriorating economic situation of developing countries and at negative trends in international economic developments, recognized the concern that the negotiations conducted so far on the establishment of the new international economic order had produced only limited results, while the gap between developed and developing countries was growing, emphasized that further resolute efforts had to be made, particularly by the developed countries, to reduce the existing imbalance and decided to convene a special session of the General Assembly in 1980, at a high level, in order to assess the progress made in the various forums of the United Nations system in the establishment of the new international economic order and, on the basis of that assessment, to take appropriate action for the promotion of the development of developing countries and international economic co-operation, including the adoption of the new international development strategy for the 1980s.

393. The discussions which took place at the time of the adoption of those important texts demonstrated the unanimous acceptance by States of the required change of direction in international economic life. The developed countries have agreed with many of the fundamental concepts on which the call for a new international economic order was based, including the concept of co-operation for economic and social development, the liberalization of trade and access to markets, agreements to stabilize commodity prices, an increased transfer of real resources to the developing countries and equitable participation in the formulation of world monetary policies.

394. Those changes and the establishment of a new international economic order were highlighted in documents of the developing countries and the non-aligned countries, in particular the "Manila Declaration and Programme of Action"¹²⁵ adopted by the Third Ministerial Meeting of the Group of 77 held at Manila from 26 January to 7 February 1976 and the "Economic Declaration",¹²⁶ adopted by the Fifth Conference of Heads of State or Government of Non-

¹²⁵ *Proceedings of the United Nations Conference on Trade and Development, Fourth Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.76.II.D.10), pp. 109 *et seq.*

¹²⁶ See A/31/197, annex II.

Aligned Countries, held at Colombo from 16 to 19 August 1976.

395. The new order means the full and complete economic emancipation of the developing countries. This will be achieved only if the developing countries recover and control their natural resources and wealth and the means of economic development. There is therefore an urgent need for the developing countries to change their traditional approach to negotiations with developed countries, which his hitherto consisted in the presentation of a list of requests to the developed countries and an appeal to their political goodwill, which has in reality been seldom forthcoming. The new international economic order should be an over-all and not a sectional concept; it should be based on the right of nations to control and expropriate foreign property and enterprises in accordance with national laws; it should imply the transfer of real resources to the developing countries and include a code of conduct for the transfer of the technology of the developed countries to the developing countries, the restructuring of a large number of international institutions and the reorganization of the world monetary and financial systems. It will necessitate not only the stabilization of commodity prices at equitable levels, but also a link (or an indexation) between these prices and the prices of manufactures. All this will call for the exercise of political will by all States.

396. The foundation of the new international economic order should be an act of justice, namely remedying the great contradiction of our century, the growing inequality between rich and poor peoples, between the developed and the developing countries.

397. Economic development is not only the new name of peace, it is also the material foundation for the independence of peoples, their confirmation as sovereign nations and the increasing well-being of peoples.

398. An imperative requirement for the development of all nations is a change in the international economic order. The current scientific and technological revolution and its consequent or accompanying processes — in the economic, demographic and social fields — have created the need for new forms of organization and rationalization and call for adjustments to be made to national sub-systems and to the world economic system as a whole. These new requirements conflict with the current framework of international economic relations, which ensures the predominance of centres of development over the peripheral areas, perpetuates and accentuates the state of economic disequilibrium, and provides a fertile environment for disruptive action and speculation. The voluntary trade mechanisms and other machinery for multilateral co-operation lack universality and are unsuitable for tackling and resolving global problems and questions of international economic co-operation in a new spirit, so as to bring national subsystems into alignment with the world system and with long-term development and to reconcile economic and ecological requirements. At a time when many peoples have acquired a state apparatus of their own, with a consequent increase in the number of national decision-making centres, when the development phase based on relatively plentiful resources is giving way to a development phase in which resources are relatively scarce and when there is greater interdependence at all levels, the world system can no longer be based on asymmetrical structures — or on gross inequalities in production capacity, consumption and wealth and on arbitrary connex-

ions between its component parts. It can no longer tolerate the development of some national components at the expense of others and the absence of any integrated over-all purpose. The perpetuation of this state of affairs will create serious dangers for all national components of the world economy, irrespective of their level of development and its ending is an objective necessity. The establishment of a new international economic order is therefore a decisive factor in the development of contemporary human civilization as a whole and in guaranteeing a lasting world peace. Its establishment is also a matter of urgency, since any delay may give rise to explosive situations and the critical point has already been passed in many fields.

399. The objective requirement having been established, it has also to be decided whether the establishment of a new international economic order is possible against the background of the wide range of divergent economic and political interests and the existence in the world of conflicting social systems. The answer to this question must be in the affirmative, since the balance of world forces is favourable to change and nothing can halt the triumphant march of peoples towards their liberation from every social and national yoke, to take their place in a society of equal nations and of equal men.

400. A condition for and an essential part of the new international economic order is a new political order governing relations between States, which should be based on the fundamental principles of international law, guaranteeing and ensuring in practice the complete equality in law of peoples, respect for their independence and national sovereignty, non-interference in their domestic affairs and mutual benefit. The universal application of these principles will make all peoples master in their own house and ensure a political order in which all States participate effectively in the formulation and adoption of decisions affecting the international community. The great Powers, with their enormous potential and influence, naturally have a great responsibility for the cause of peace and they have an essential contribution to make in preventing a new war, preserving peace and promoting international co-operation. However, the positive role which the great Powers can play in world development is directly proportional to the responsibility which they show in upholding the standards of international justice, in promoting equal rights between States, the principles of the independence and sovereignty of peoples and non-interference in their internal affairs. From this standpoint, failure to appreciate the contribution which small and medium-sized States can make to world society can only complicate the solution of urgent questions and stand in the way of peace, co-operation and the development of peoples. A realistic approach must emphasize the political element, in conjunction with the need to alter relations between States. Any change in the bilateral and multilateral machinery can only be the result of the manifestation by States of political will. A new economic order is inconceivable without a real and effective democratization of international life, without ensuring real equality between peoples and countries, without due respect for the sovereignty of all peoples and without permitting their participation in decision-making within the international community. The new international economic order cannot be established by purely formal changes, designed to perpetuate the old policy of domination and inequality. The new order requires a radical change in international relations, which is

the foundation on which co-operation in accordance with the principles of international law will be built.

401. The establishment of a new international economic order calls for the solution of mankind's present problems, not by confrontation, but through dialogue and co-operation, since only in this way can the interest of all peoples be served. Confrontation, on the other hand, will delay the achievement of solutions and block real and continuing progress in the various fields of international reconstruction. The solution to the problems affecting the new international order can thus be reached only by laborious negotiation and the "negotiation explosion" is an indication that humanity has entered a new era.

402. For sustained development and the establishment of a new international order, a democratic universalism is needed and clubs with limited membership must be rejected. Attempts and tendencies to solve world problems by meetings with restricted participation are survivals from the past, but they involve the risk of causing a division of the international community into its constituent elements and the adoption of solutions that may perpetuate privileged positions. Since the general development of peoples and the establishment of a new international order is the concern of all peoples, all peoples must be allowed to participate in the process and to share in the benefits of development and of the establishment of the new international order.

403. The need to establish a new international economic order, the democratization of international relations and the formulation of new principles of international law are now the subject of intensive discussion because of the aggravation of the problems of under-development and the wide range of difficulties that have created a state of economic insecurity in the world market. These harsh realities have proved that solutions can no longer be found in half-measures or temporary expedients. The situation is such as to dictate a fundamental revision of the theories and practices on which the international economic system has hitherto been based and the establishment of a new international economic order capable of ensuring progress for all peoples and for the whole international community.

404. The new international economic order is inseparably linked with the humanistic ideal of eliminating under-development and guaranteeing all peoples a life worthy of this civilized era. Experience shows that there can be no real peace, détente or security as long as two thirds of humanity are facing serious problems of under-development and the world continues to be divided into the poor and the rich. Hence, the need to establish a new international economic order and a more just and better world, based on the principles of equality and equity, so as to ensure the progress of all countries, in particular the less developed countries, and the unimpeded enjoyment by all peoples of the benefits of the current technological and scientific revolution.

I. International law relating to development

405. The legal instruments adopted by United Nations bodies to deal with different aspects of trade and development have created an international law relating to development, which is a new law both as regards its sphere of action and the instruments through which it has come into being. Most of these are resolutions whose legal status is a

matter of controversy, since they are regarded in certain circles as mere exhortations which cannot give rise to anything stronger than a non-binding recommendation. The extent to which an instrument has binding force depends not only on its substance but also on the institutional context of its application, the circumstances in which it was adopted and the way in which its implementation is to be monitored. Resolutions adopted by a large majority express the political will of that majority, which may subsequently be accepted by the international community as a whole; moreover, a resolution that has the assent of all the participants is likely to be of legal as well as political significance.

406. The legal instruments which have created this international law relating to development express the development needs of the international community in its advance towards greater democracy in international relations by interpreting and appropriately supplementing the Charter of the United Nations, which itself went a step further than the Covenant of the League of Nations in establishing a legal basis for trade relations and co-operation among States. When the League of Nations Covenant was being drawn up, some attention was paid to the economic and social foundations of peace in Articles 23 and 24, which covered a few of the aspects of economic and social co-operation among States. However, the demands of international life made it necessary for the League of Nations to undertake continuing activity in those areas, and the Council of the League, recognizing the structural weaknesses of its organization and procedures in those fields, set up the Bruce Committee in 1939. This body submitted recommendations¹²⁷ for a revision of the Covenant and to some extent anticipated the system that was later established by the Charter of the United Nations.

407. When the Charter of the United Nations was drawn up at the San Francisco Conference in 1945, the small States insisted, against the wishes of the great Powers, on the need to define detailed objectives for international economic and social action in the post-war period. This led to the inclusion in the Charter of provisions on international economic and social co-operation. It was thus established in Article 1 of the Charter that one of the purposes of the Organization was to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. That purpose was expanded and made more specific in Article 55 of the Charter, which reads as follows:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

¹²⁷ See League of Nations, *The Development of International Co-operation in Economic and Social Affairs, Report of the Special Committee* (A.23.1939).

Under the terms of article 56 of the Charter, "Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55".

408. However, with the changing world situation, these Articles of the Charter are now too general to meet the constantly growing needs of international economic co-operation, and they have been expanded upon by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The Declaration states that:

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

It also provides that:

States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention, that:

States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

409. In the particular field of international economic relations, the United Nations and the United Nations Conference on Trade and Development have been concerned throughout the last 10 years with the preparation of instruments embodying the basic principles and rules that give rise to the economic rights and duties of States. This was in fact the first stage in the elaboration of the Charter of Economic Rights and Duties of States. In 1964, at its first session, the United Nations Conference on Trade and Development recommended a number of "General Principles" and "Special Principles"¹²⁸ to govern international trade relations and trade policies conducive to development and also adopted a recommendation on principles relating to the transit trade of land-locked countries.¹²⁹

410. But as those principles had not been approved by all the developed countries, the Conference, at its second session, held at New Dehli in 1968, adopted resolution 22 (II) on steps to achieve a greater measure of agreement on principles governing international trade relations and trade policies conducive to development and requested that additional principles should be elaborated on new and fundamental problems.¹³⁰

411. In 1970, through the International Development Strategy for the Second United Nations Development Decade, the Member States reaffirmed their common resolve to seek a better and more effective system of inter-

national co-operation whereby the prevailing disparities in the world might be banished and prosperity secured for all.

412. In the Charter of Algiers, adopted at the Ministerial Meeting of the Group of 77 on 24 October 1967¹³¹, and the Declaration and Principles of the Action Programme of Lima,¹³² adopted by the Group of 77 at its Second Ministerial Meeting on 7 November 1971, the developing countries called on the international community to take urgent steps in keeping with their development requirements to assist them in accelerating their rate of economic growth and substantially raising the standard of living of their peoples. At the third session of the United Nations Conference on Trade and Development, held at Santiago, Chile, in 1972, the developing countries again stressed that new principles were required to protect them from the adverse effects of world economic events and at the same time drew up a resolution on steps to achieve a greater measure of agreement on principles governing international trade relations and policies conducive to development¹³³ in which the new principles in question were embodied.

413. In its resolution 46 (III), the Conference adopted 13 principles on this subject.¹³⁴

414. The sixth special session of the General Assembly of the United Nations made an important contribution to the definition of the principles that should form the basis of a new international economic order. Resolution 3201 (S-VI) of 1 May 1974 entitled "Declaration on the Establishment of a New International Economic Order" provides that:

[...]

4. The new international economic order should be founded on full respect for the following principles:

(a) Sovereign equality of States, self-determination of all peoples, inadmissibility of the acquisition of territories by force, territorial integrity and non-interference in the internal affairs of other States;

(b) The broadest co-operation of all the States members of the international community, based on equity, whereby the prevailing disparities in the world may be banished and prosperity secured for all;

(c) Full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries, bearing in mind the necessity to ensure the accelerated development of all the developing countries, while devoting particular attention to the adoption of special measures in favour of the least developed, land-locked and island developing countries as well as those developing countries most seriously affected by economic crises and natural calamities, without losing sight of the interests of other developing countries;

(d) The right of every country to adopt the economic and social system that it deems the most appropriate for its own development and not to be subjected to discrimination of any kind as a result;

(e) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;

¹²⁸ See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), pp. 18-25.

¹²⁹ *Ibid.*, p. 25, annex A.I.2.

¹³⁰ *Proceedings of the United Nations Conference on Trade and Development, Second Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.68.II.D.14), p. 34.

¹³¹ *Ibid.*, pp. 431-441.

¹³² *Ibid.*, *Third Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.73.II.D.4), pp. 373-407.

¹³³ *Ibid.*, pp. 37-39.

¹³⁴ *Ibid.*, pp. 59-60.

(f) The right of all States, territories and peoples under foreign occupation, alien and colonial domination or *apartheid* to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples;

(g) Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries;

(h) The right of the developing countries and the peoples of territories under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities;

(i) The extending of assistance to developing countries, peoples and territories which are under colonial and alien domination, foreign occupation, racial discrimination or *apartheid* or are subjected to economic, political or any other type of coercive measures to obtain from them the subordination of the exercise of their sovereign rights and to secure from them advantages of any kind, and to neo-colonialism in all its forms, and which have established or are endeavouring to establish effective control over their natural resources and economic activities that have been or are still under foreign control;

(j) Just and equitable relationship between the prices of raw materials, primary commodities, manufactured and semi-manufactured goods exported by developing countries and the prices of raw materials, primary commodities, manufactures, capital goods and equipment imported by them with the aim of bringing about sustained improvement in their unsatisfactory terms of trade and the expansion of the world economy;

(k) Extension of active assistance to developing countries by the whole international community, free of any political or military conditions;

(l) Ensuring that one of the main aims of the reformed international monetary system shall be the promotion of the development of the developing countries and the adequate flow of real resources to them;

(m) Improving the competitiveness of natural materials facing competition from synthetic substitutes;

(n) Preferential and non-reciprocal treatment for developing countries, wherever feasible, in all fields of international economic co-operation whenever possible;

(o) Securing favourable conditions for the transfer of financial resources to developing countries;

(p) Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies;

(q) The need for all States to put an end to the waste of natural resources, including food products;

(r) The need for developing countries to concentrate all their resources for the cause of development;

(s) The strengthening, through individual and collective actions, of mutual economic, trade, financial and technical co-operation among the developing countries, mainly on a preferential basis;

(t) Facilitating the role which producers' associations may play within the framework of international co-operation and in pursuance of their aims, *inter alia* assisting in the promotion of sustained growth of the world economy and accelerating the development of developing countries.

415. At the third session of the United Nations Conference on Trade and Development, the developing countries considered that those principles should be embodied in international legal instruments, so that the Governments concerned would be able to assert their rights. They pointed out that one such instrument—the Charter of Economic Rights and Duties of States—should be regarded as the economic equivalent of the Universal Declaration of Human Rights. At the conclusion of the deliberations, the Conference adopted, by 90 votes to none, with 19 abstentions, resolution 45 (III) on the Charter of Economic Rights

and Duties of States. This resolution noted with concern that:

the international legal instruments on which the economic relations between States are currently based are precarious and that it is not feasible to establish a just order and a stable world as long as a charter to protect duly the rights of all countries and in particular the developing States is not formulated.¹³⁵

It also established a working group composed of 31 members to draw up the text of a draft charter. This working group held two sessions at Geneva in 1973 and one in 1974, and its last session was held at Mexico City in June of that year.¹³⁶

416. The stimulus for the completion of the work of preparing the Charter of Economic Rights and Duties of States was provided by the sixth special session of the General Assembly, which was held from 9 April to 2 May 1974 to study the problems of raw materials and development. In its resolution 3201 (S-VI) the Assembly stressed that

the United Nations as a universal organization should be capable of dealing with problems of international economic co-operation in a comprehensive manner and ensuring equally the interests of all countries. It must have an even greater role in the establishment of a new international economic order. The Charter of Economic Rights and Duties of States, for the preparation of which the present Declaration will provide an additional source of inspiration, will constitute a significant contribution in this respect.

Resolution 3202 (S-VI) of 1 May 1976 entitled "Programme of Action on the Establishment of a New International Economic Order" stated that:

The Charter of Economic Rights and Duties of States, the draft of which is being prepared by a working group of the United Nations and which the General Assembly has already expressed the intention of adopting at its twenty-ninth regular session, shall constitute an effective instrument towards the establishment of a new system of international economic relations based on equity, sovereign equality, and interdependence of the interests of developed and developing countries. It is therefore of vital importance that the aforementioned Charter be adopted by the General Assembly at its twenty-ninth session.

417. Resolution 3281 (XXIX), of 12 December 1974, concerning the Charter of Economic Rights and Duties of States was adopted at the twenty-ninth session of the General Assembly by 120 votes to 6 with 10 abstentions.

418. The Charter of Economic Rights and Duties of States, whose fundamental purpose is to promote the establishment of the new international economic order, based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems, was solemnly adopted and proclaimed by the General Assembly of the United Nations

¹³⁵ *Ibid.*, p. 58.

¹³⁶ The main documents of the Working Group on the Charter of Economic Rights and Duties of States are as follows: TD/B/AC.12/R.3 and Corr.1 and Add.1 and 2 (Working Paper of 12 January 1973 submitted by UNCTAD secretariat); TD/B/AC.12/1 and Corr.1 (Report of 6 March 1973 of the Working Group on the Charter of Economic Rights and Duties of States on its first session); TD/B/AC.12/R.13 and Add.1 and 2 (Note by the UNCTAD secretariat of 5 June 1973); TD/B/AC.12(II)/CRP.1 (Comments and suggestions, received from Governments of States members of UNCTAD pursuant to Conference resolution 45 (III) of 11 July 1973); TD/B/AC.12/2 and Add.1 (Report of 8 August 1973 of the Working Group on the Charter of Economic Rights and Duties of States on its second session); TD/B/AC.12/3 (Report of 8 March 1974 of the Working Group on the Charter of Economic Rights and Duties of States on its third session); TD/B/AC.12/4 and Corr.1 (Report of 1 August 1974 of the Working Group on the Charter of Economic Rights and Duties of States on its fourth session).

on 12 December 1974. It constituted a landmark in the increasingly vigorous advance towards the establishment of new and democratic rules for economic relations between States and also marked the close of the difficult negotiations that had begun at the third session of the United Nations Conference on Trade and Development, held at Santiago, Chile, at which Luis Echeverría Álvarez, President of the United Mexican States, had first proposed the idea of a charter of that kind, in an address given on 19 April 1972.¹³⁷

419. The Charter of Economic Rights and Duties of States is one of the new and fundamental documents which can give a strong impetus to the process of readjustment of relations between States and to the institution of a policy based on equality, peace and international co-operation in place of an imperialist policy of force and diktat. It is a key instrument in the formulation of new rules of international law that will respond to the need for greater democracy in international life.

420. The Charter of Economic Rights and Duties of States reflects the over-all development interests of the international community and the need to bridge the gap between the developed and developing countries and to promote the advancement of the latter countries.

421. The fundamental purpose of the Charter of Economic Rights and Duties of States is to promote the establishment of a new international economic order founded on equity, sovereign equality, interdependence, common interest and co-operation among all States, and to contribute to the creation of conditions for:

- (a) The attainment of wider prosperity among all countries and of higher standards of living for all peoples,
- (b) The promotion by the entire international community of the economic and social progress of all countries, especially developing countries,
- (c) The encouragement of co-operation, on the basis of mutual advantage and equitable benefits for all peace-loving States which are willing to carry out the provisions of the present Charter, in the economic, trade, scientific and technical fields, regardless of political, economic or social systems,
- (d) The overcoming of main obstacles in the way of the economic development of the developing countries,
- (e) The acceleration of the economic growth of developing countries with a view to bridging the economic gap between developing and developed countries,
- (f) The protection, preservation and enhancement of the environment.

It stresses the need to establish and maintain a just and equitable economic and social order through:

- (a) The achievement of more rational and equitable international economic relations and the encouragement of structural changes in the world economy,
- (b) The creation of conditions which permit the further expansion of trade and intensification of economic co-operation among all nations,
- (c) The strengthening of the economic independence of developing countries,
- (d) The establishment and promotion of international economic relations, taking into account the agreed differences in development of the developing countries and their specific needs.

422. The Charter proclaims the following principles as fundamentals of international economic relations:

- (a) Sovereignty, territorial integrity and political independence of States;
- (b) Sovereign equality of all States;
- (c) Non-aggression;
- (d) Non-intervention;
- (e) Mutual and equitable benefit;
- (f) Peaceful coexistence;
- (g) Equal rights and self-determination of peoples;
- (h) Peaceful settlement of disputes;
- (i) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development;
- (j) Fulfilment in good faith of international obligations;
- (k) Respect for human rights and fundamental freedoms;
- (l) No attempt to seek hegemony and spheres of influence;
- (m) Promotion of international social justice;
- (n) International co-operation for development;
- (o) Free access to and from the sea by land-locked countries within the framework of the above principles.

423. The economic rights and duties of States set forth in the Charter relate to the following: The sovereign and inalienable right of every State to choose its economic system (article 1); Full and permanent sovereignty over wealth, natural resources and economic activities (article 2); Co-operation in the exploitation of shared natural resources (article 3); The right to engage in international trade (article 4); The right to associate in organizations of primary commodity producers (article 5); The duty to contribute to the development of international trade (article 6); The primary responsibility of every State to promote the economic, social and cultural development of its people (article 7); Co-operation in facilitating more rational and equitable economic relations (article 8); The responsibility of States to co-operate in the promotion of economic and social progress throughout the world (article 9); The juridical equality of States and their participation in the adoption of decisions to solve international problems (article 10); Co-operation to strengthen the efficiency of international organizations (article 11); Subregional, regional and interregional co-operation (article 12); The right to benefit from the advances of science and technology (article 13); Co-operation to promote the expansion and liberalization of world trade (article 14); The utilization of the resources released by disarmament measures for economic and social development (article 15); The elimination of colonialism, *apartheid*, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination as a prerequisite for development (article 16); International co-operation for development (article 18); The establishment, improvement and enlargement of the generalized system of preferences (articles 18 and 19); The expansion of trade between the developing countries and socialist countries (article 20); The expansion of trade among the developing countries (articles 21 and 25); Assistance to developing countries (articles 27 and 28); Consideration of the interests of other countries in the conduct of mutual economic relations (article 24); Trade between countries with different systems (article 26); Enjoyment by each State of the benefits of world trade in invisibles (article 27); Just and equitable terms of trade (article 28); Joint responsibility *vis-à-vis* the international community with respect to the sea-bed and ocean floor (article 29); and environmental protection (article 30). Close interrelationship between the well-being of the developed countries and the growth and development of the developing countries (article 31); Rejection of the use of economic, political

¹³⁷ See *Proceedings of the United Nations Conference on Trade and Development, Third Session*, vol. Ia, part one, *Summaries of statements by heads of delegation* (United Nations publication, Sales No. E.73.II.D.Mim.1, part one) pp. 184 *et seq.*

or any other types of measures to coerce a State in order to obtain from it the subordination of the exercise of its sovereign rights (article 32). The Charter of Economic Rights and Duties of States also states that its provisions should be interpreted and applied in the light of the Charter of the United Nations, that they are interrelated (article 33), and that the General Assembly should periodically review the implementation of the Charter of Economic Rights and Duties of States (article 34).

424. At its seventh special session, in resolution 3362 (S-VII) of 16 September 1975 entitled "Development and international economic co-operation", the General Assembly recognized that:

greater co-operation among States in the fields of trade, industry, science and technology as well as in other fields of economic activities, based on the principles of the Declaration and the Programme of Action on the Establishment of a New International Economic Order and of the Charter of Economic Rights and Duties of States, would also contribute to strengthening peace and security in the world.

425. In resolution 3486 (XXX) of 12 December 1975 on implementation of the Charter of Economic Rights and Duties of States, the General Assembly solemnly reiterated the united determination to strengthen and develop the new international economic order, which is based on the Declaration and the Programme of Action on the Establishment of a New International Economic Order, adopted by the General Assembly at its sixth special session, and on the Charter of Economic Rights and Duties of States, adopted by the General Assembly at its twenty-ninth session; invited Member States to take all appropriate measures for the prompt achievement of these aims; and decided to entrust the Economic and Social Council with the task of reviewing the implementation of the Charter of Economic Rights and Duties of States, with a view to preparing adequately its systematic and comprehensive consideration by the General Assembly, as a separate item, as provided in article 34 of that Charter, and requested the Council to report to the Assembly at its thirty-second session on the progress achieved.

426. The Charter of Economic Rights and Duties of States is the legal foundation of the new international economic order on which bilateral and multilateral co-operation among States in trade, industry, science and technology, as well as economic matters, should be based and should develop. It constitutes the basis for the eradication of injustices and inequalities, for contributing to the progress of the developing countries and of other countries and for the strengthening of world peace and security. It enunciates the right and duty of all States to contribute to the solution of the world's present economic problems, in particular to bridging the economic gap between the developed and the developing countries and to increasing the capacity of the latter to take individual and collective action for their development. International conferences on trade, industry, food and agriculture, as well as the sixth and seventh special sessions of the General Assembly, and the declarations, action programmes and other documents adopted in those forums have all stressed the need to expand the developing world's role in trade, industry and agriculture. The attainment of this objective will depend, however, on whether the existing inequitable relations between the industrially advanced nations and the developing countries can be reorganized to make them less disadvantageous for the latter. The Charter of Economic Rights and Duties of States will

be a keystone in this restructuring, as well as in the expansion of the industry and the growth of the trade of the developing countries through greater co-operation among them. The need for this is becoming increasingly evident in the United Nations system, and it is thus clear that measures must be taken, on the basis of the Charter of Economic Rights and Duties of States, to intensify co-operation among the developing countries as an essential element in the establishment of a new international economic order.

427. The Charter of Economic Rights and Duties of States is a statute for economic co-operation and development and it must be applied universally by all States, since the new international economic order will not come into being if certain States observe rules and norms that are incompatible with this Charter. It should also be taken into account in drawing up an international code of conduct for transnational corporations to meet the requirements of the new international economic order.

428. The Charter of Economic Rights and Duties of States provides the economic agencies that exist in various parts of the world with a basis for their activities that is consistent with the imperatives of the new economic order. It provides new guidelines for action to world organizations and to the regional commissions of the United Nations and a basis for the structural readaptation and liberalization of international trade.

429. In the case of the international monetary and banking institutions, the Charter of Economic Rights and Duties of States provides a foundation for the reform of the international monetary system, for the adoption of measures that will make possible an adjustment of world prices in accordance with the needs of the developing countries and for ensuring that those countries have free access to the resources of the International Monetary Fund, etc. In the sphere of food and agriculture, the World Food Conference held at Rome in 1974¹³⁸ took important decisions whose implementation must take place in accordance with the Charter of Economic Rights and Duties of States. Similarly, in the field of industry, the Lima Declaration and Plan of Action on Industrial Development and Co-operation,¹³⁹ which were drawn up in the light of the Charter of Economic Rights and Duties of States and adopted by the Second General Conference of the United Nations Industrial Development Organization in March 1975, provide the basis for enlargement of the role of that Organization. By means of the Charter of Economic Rights and Duties of States it should be possible to adopt an international code of conduct for the transfer of technology that will meet the needs of the developing countries. With respect to the over-all economic activities of the United Nations, that Charter is a document of great importance for the revision of the International Development Strategy and for the restructuring of the economic and social sectors in the United Nations system.

430. In view of the interdependence of economic and social development in the wider context of the growth and development processes and of the fact that the International Development Strategy must take full account of the social aspects of development, the Declaration on Social

¹³⁸ See United Nations, *Report of the World Food Conference, Rome, 5-16 November 1974* (United Nations publications, Sales No. E.75.II.A.3).

¹³⁹ ID/CONF.3/31, chap. IV.

Progress and Development (General Assembly resolution 2542 (XXIV) of 11 December 1969) will be of special significance as a key instrument for the new international order. The Declaration states that social justice, progress and development require the immediate elimination of all forms of inequality, exploitation of peoples and individuals, colonialism, racism, and ideologies opposed to the purposes and principles of the United Nations; it calls for the recognition and effective implementation of the fundamental rights and freedoms of the human person and proclaims that social progress and development should aim at the constant improvement of material and spiritual conditions for everyone.

431. The right to development means, in human terms, the new advances that are necessary for enjoyment of the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. In this connexion, the Commission on Human Rights has published an important study entitled: *The realization of economic, social and cultural rights: problems, policies, progress*, by Manouchehr Ganji, Special Rapporteur of the Commission.¹⁴⁰ At its thirty-third session, the Commission on Human Rights, in resolution 4 (XXXIII) of 21 February 1977, expressed new and important ideas on this subject and recommended that a study should be undertaken on "The international dimensions of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and fundamental human needs".

J. Permanent sovereignty over natural resources

432. Permanent sovereignty over natural resources means that natural resources belong to the peoples of the territory in which they are situated; that, whether or not those peoples constitute independent States, the resources in question must be exploited for their benefit; and that the legal régime governing such exploitation must be established or modified in accordance with the will of those peoples by their independent State or, in the case of peoples still dependent, by the authorities administering them.

433. The right to exercise permanent sovereignty over natural resources is an inherent right of sovereign States, each State being free to determine how its natural resources are to be used and the terms on which they may be exploited. While it is inherent in the right to exercise sovereignty that a State can control the ownership and use of its natural resources and that it is entitled to a fair share of the benefits derived from their exploitation by means of foreign capital, Governments of developing countries are not always able to assert their rights fully because of their relatively weak bargaining position in dealing with foreign investors.

434. Permanent sovereignty over natural resources, a new notion in international law, was developed in the process of decolonization and simultaneously with the formulation of fundamental human rights and freedoms; at the juridical level, this new principle entails a revision of traditional international law, while at the economic and social

levels it has become the corner-stone of the development process.

435. Does the inalienable right to permanent sovereignty over natural wealth and resources, a right which is vested in peoples or their independent States and of which they are the beneficiaries, and which is now unanimously recognized in international law, permit the existence and exercise of acquired rights by foreign interests in the exploration and exploitation of natural wealth and resources, and if so to what extent? In the controversy on this subject, the developing and the developed countries have adopted divergent positions but gradual progress has, nonetheless, been made in the pertinent negotiations held at various stages in the United Nations.

436. Nowadays, the question of raw materials and energy, which is linked to that of permanent sovereignty over natural resources, has assumed vital importance for all peoples, conditioning the very future of human civilization. The importance of natural resources is generally recognized because of the role they play in the economic growth of developing countries and through the interest which the peoples of new States, and of Non-Self-Governing Territories, take in their natural resources. The developing countries are anxious to speed up development of their natural resources as aids to economic and social growth; they are also anxious to affirm their national interests in the exploitation of these resources, because, with the breaking of colonial links and the establishment of new political structures, the Governments of these countries have found it necessary to assume responsibility for the development of their resources.

437. This means that in many developing countries national independence and the struggle for economic independence have lent immediacy to the issue of permanent sovereignty over natural resources, which is a highly complex matter displaying economic, legal and technical aspects and having important political and social implications. Although responsibility for development lies mainly with the developing countries, which must mobilize all their wealth and resources to that end, their permanent sovereignty over their wealth and resources must be respected and strengthened, since permanent sovereignty constitutes a fundamental element of the economic and political independence of States.

438. Accordingly, the principle of the permanent sovereignty of States over their natural resources and their inalienable right to exercise this sovereignty have been recognized by all States Members of the United Nations and have been proclaimed and reaffirmed in a succession of General Assembly resolutions, the first of which (resolution 523 (VI)) dates back to 12 January 1952. The General Assembly and other organs of the United Nations, by the instruments they have adopted, have made a decisive contribution to the proclamation and development of the permanent sovereignty of peoples and States over their natural wealth and resources. The notion of permanent sovereignty over natural wealth and resources was formulated in the process of preparing the International Covenants on Human Rights. Article 1, paragraph 2, of the Covenants contains the following formulation:

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the

¹⁴⁰ United Nations publication, Sales. No. E.75.XIV.2.

principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

439. The discussion of this formulation dates back to the eighth session of the Commission on Human Rights (14 April-14 June 1952).¹⁴¹ An official proposal was submitted, with a view to securing the insertion in the two covenants of a provision stipulating that the right of peoples to self-determination also included permanent sovereignty over their natural wealth and resources and that in no case might a people be deprived of its own means of subsistence on the grounds of any rights that might be claimed by other peoples. In the vote, the words "The right of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources", were adopted by 10 votes to 6, with 2 abstentions; the words "In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States" were adopted by 9 votes to 8, with 1 abstention; the draft resolution as a whole was adopted by 10 votes to 6, with 2 abstentions; and the Commission decided, by 9 votes to 4, with 5 abstentions, that the text should form the paragraph 3 of the article concerning the right of peoples to self-determination. The following text was thus adopted: "The right of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States". It was pointed out, in opposition to this text, that the expression "the right to permanent sovereignty" was not a tenable concept, as States could voluntarily limit their own sovereignty at any time. Furthermore, it was feared that the provision might be invoked to sanction the expropriation or arbitrary confiscation of foreign property or the unilateral denunciation of international agreements or treaties. On the other hand, it was argued that the right of peoples to self-determination certainly included the simple and elementary principle that peoples and nations should be able freely to dispose of their natural resources and wealth. It was pointed out that the proposal was not intended to discourage foreign investors by threatening them with expropriation or confiscation but to warn against such exploitation as might result in depriving local populations of their own means of subsistence.

440. During the consideration of the proposal of the Commission on Human Rights by the Third Committee of the General Assembly at its tenth session,¹⁴² the two sentences of paragraph 3 relating to permanent sovereignty were criticized; it was argued that their wording was imprecise and dangerous, and some delegations said that they were opposed to the inclusion of any provision relating to the permanent sovereignty of peoples over their natural wealth and resources in an article concerning the right of peoples to self-determination. Others considered that the paragraph, as drafted, was either superfluous or dangerous because it could impede international co-operation. The first sentence was criticized because the meaning of the term "permanent sovereignty" in the English version was not clear. Objections were raised to the second sentence on the ground that, as worded, it might have excessive consequences and violate existing international treaties and agreements between States, because it could be interpreted as

meaning that there could be expropriation without equitable compensation; it might discourage foreign investors and, in particular, jeopardize political assistance to under-developed countries. Delegations supporting the paragraph admitted that it might be necessary to amend it in order to cater for some of those objections, and the following amendments were therefore proposed: in the first sentence, that the words "also include permanent sovereignty over their natural wealth and resources" should be replaced by the words "include freedom to dispose of their natural wealth and resources for their own welfare, without prejudice to any obligations or responsibilities arising out of the economic interdependence of peoples or the principles of international law"; that in the second sentence, the words "on the grounds of any rights that may be claimed by other States" should be deleted; and that the following sentence should be added at the end of the paragraph: "It is understood that the said right, like all the rights inherent in sovereignty, shall not affect the principles of economic interdependence and international co-operation". After examining all these proposals, the Working Party of the Third Committee proposed the following text: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". It was explained that the Working Party had deleted the reference to "right to permanent sovereignty" and had reworded the paragraph in order to meet objections that it could be invoked to justify expropriation without equitable compensation. The fact that the Working Party's text referred to international law and international economic co-operation was intended to dissipate any misgivings concerning foreign investments in a country and the words "based upon the principle of mutual benefit" were intended to provide certain guarantees. It was objected that the new text did not fully meet those criticisms, that the wording was vague and ambiguous and that many of the terms used could be interpreted in different ways; and it was said that the meaning of the word "peoples" in the paragraph in question seemed to be different from that given to it in paragraph 1. An amendment proposing the deletion of the text was rejected by 25 votes to 18, with 15 abstentions. The words "for their own ends" were put to the vote separately and adopted by 21 votes to 17, with 20 abstentions. The words "based on the principle of mutual benefit", also put to the vote separately, were adopted by 21 votes to 14, with 23 abstentions. The words "in no case may a people be deprived of its own means of subsistence" were put to the vote separately and adopted by 25 votes to 8, with 25 abstentions. Paragraph 2 as a whole was adopted by 26 votes to 13, with 19 abstentions. The text was as follows:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

441. Subsequently, various General Assembly resolutions expanded and clarified the concept of permanent sovereignty. At its sixth session, for instance, in resolution 523 (VI) of 12 January 1952, the General Assembly stated that:

The under-developed countries have the right to determine freely the use of their natural resources and [...] must utilize such

¹⁴¹ See para. 288 (g) and (h) above.

¹⁴² See *Official Records of the General Assembly, Tenth Session, Annexes*, agenda item 28, sect. I, document A/3077.

resources in order to be in a better position to further the realization of their plans of economic development in accordance with their national interests, and to further the expansion of the world economy.

It recommended that consideration should be given to the possibility of facilitating, through commercial agreements:

(ii) the development of natural resources which can be utilized for the domestic needs of the under-developed countries and also for the needs of international trade, provided that such commercial agreements shall not contain economic or political conditions violating the sovereign rights of the under-developed countries, including the right to determine their own plans for economic development.

442. At its seventh session, in resolution 626 (VII) of 21 December 1952, the General Assembly referred to "the need for encouraging the under-developed countries in the proper use and exploitation of their natural wealth and resources" and to the fact that "the economic development of the under-developed countries is one of the fundamental requisites for the strengthening of universal peace". It stated its awareness that "the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the Purposes and Principles of the Charter of the United Nations". The Assembly recommended

all Member States, in the exercise of their right freely to use and exploit their natural wealth and resources wherever deemed desirable by them for their own progress and economic development, to have due regard, consistently with their sovereignty, to the need for maintaining the flow of capital in conditions of security, mutual confidence and economic co-operation among nations.

It further recommended all Member States to refrain from acts, direct or indirect, designed to impede the exercise of the sovereignty of any State over its natural resources.

443. At its thirteenth session, the Assembly adopted resolution 1314 (XIII) of 12 December 1958 on recommendations concerning international respect for the right of peoples and nations to self-determination. In that resolution, it noted that

the right of peoples and nations to self-determination as affirmed in the two draft Covenants completed by the Commission on Human Rights includes "permanent sovereignty over their natural wealth and resources".

It stated its belief in the necessity of having full information at its disposal regarding the actual extent and character of that sovereignty and decided to establish a commission to conduct a full survey of the status of that basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening. It further decided that in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries.

444. At its fifteenth session, in resolution 1515 (XV) of 15 December 1960, the General Assembly reaffirmed the objectives of the United Nations and stated its belief that their achievement demanded the maintenance of a high and expanding level of economic activity and of generally beneficial multilateral and bilateral trade free from artificial restrictions, in order to enable the less developed countries and those dependent on the export of a small range of primary commodities to sell more of their products at stable and remunerative prices in expanding markets, and so increas-

ingly to finance their own economic development from their earnings of foreign exchange. It recommended "that the sovereign right of every State to dispose of its wealth and its natural resources should be respected, in conformity with the rights and duties of States under international law".

445. At its sixteenth session, in resolution 1720 (XVI) of 19 December 1961, the General Assembly expressed its desire "to promote the strengthening of permanent sovereignty of peoples and nations over their natural wealth and resources".

446. At its seventeenth session, the General Assembly adopted resolution 1803 (XVII), of 14 December 1962, entitled "Permanent sovereignty over natural resources", in which it considered that

any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States;

and that nothing in paragraph 4 of the declaration in part I of the resolution

in any way prejudices the position of any Member State or any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule.

It noted that the subject of succession of States and Governments was being examined as a matter of priority by the International Law Commission. The Assembly considered that it was desirable to promote international co-operation for the economic development of developing countries; that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination; and that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State. It mentioned the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of natural resources and wealth and the important part which the United Nations and other international organizations were called upon to play in that connexion. It attached particular importance to the question of promoting the economic development of developing countries and securing their economic independence and noted that "the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence". It expressed its wish that the United Nations should consider further

the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries.

It also declared that:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely

agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.

4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.

5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.

6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

447. During the consideration of the above resolution in its draft form,¹⁴³ the following amendments were submitted and rejected:

(a) To insert the following new paragraph between the third and fourth preambular paragraphs:

Considering that the obligations of international law cannot apply to alleged rights acquired before the accession to full national sovereignty of formerly colonized countries and that, consequently, such alleged acquired rights must be subject to review as between equally sovereign States.

(b) To insert the following new paragraph between the fourth and fifth preambular paragraphs:

Bearing in mind the need of many countries in the process of development for capital and enterprise from abroad and hence the desirability of according to such capital and enterprise reasonable and equitable treatment in conformity with the mutual interests of the developed and under-developed countries.

(c) To reword paragraph 2 of the draft declaration as follows:

The terms under which rights governing the exploration, development and disposition of such resources, as well as the investment of foreign capital required for these purposes, are granted should be in conformity with the rules and conditions which the peoples and the nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

(d) In paragraph 3 of the draft declaration,

(i) To replace the words "capital imported" by the words "capital invested" and to insert the following sentence between the first and second sentences: "Agreements freely entered into shall be faithfully observed", which was later revised to read: "Foreign investment and

technical assistance agreements freely entered into by sovereign States shall be observed in good faith";

(ii) To replace the second sentence by the following sentence:

Where it is agreed between the recipient State and the investor that profits should be shared, this sharing must be in proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources, due regard being given to the acquired rights of the investor;

and

(iii) To delete paragraph 3.

(e) In paragraph 4 of the draft declaration,

(i) To replace the words "In such cases, the owner shall be paid appropriate compensation in accordance with the rules ..." by the words "In such cases, the owner shall be paid adequate compensation, when and where appropriate, in accordance with the rules ...";

(ii) After the words "In such cases, the owner shall be paid appropriate", to insert the words "prompt, adequate and effective"; and to delete the last two sentences;

(iii) To reword paragraph 4 to read as follows:

Nationalization, expropriation or requisition shall only be resorted to if strictly required on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic or foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, national jurisdiction should in the first instance be resorted to. However, upon agreement by the parties concerned, settlement of the dispute may be made through arbitration or international adjudication;

(iv) To insert the following words at the beginning of paragraph 3:

Confirms the inalienable right of peoples and nations to the unobstructed execution of nationalization, expropriation and other essential measures aimed at protecting and strengthening their sovereignty over their natural wealth and resources;

(v) To replace the second sentence of the paragraph by the following sentence:

The question of payment of compensation to the owners shall in such cases be decided in accordance with the national law of the country taking those measures in the exercise of its sovereignty;

(vi) to replace the last part of the paragraph by the following text:

[...] national jurisdiction should be exhausted. Where however there is agreement to that effect by the parties concerned, settlement of the dispute shall be made through arbitration or international adjudication,

which was subsequently amended to read:

[...] national jurisdiction shall be exhausted. However, upon agreement by the parties concerned, settlement of the dispute should be made through arbitration or international adjudication;

and

(vii) That the paragraph should be deleted.

448. The Final Act of the first session of the United Nations Conference on Trade and Development, containing principles to govern international trade relations and trade policies conducive to development, provided in General Principle Three that:

every country has the sovereign right freely to trade with other countries, and freely to dispose of its natural resources in the interest

¹⁴³ *Ibid.*, Seventeenth Session, Annexes, agenda item 12, document A/5344/Add.1.

of the economic development and well-being of its own people.¹⁴⁴

This principle was adopted by 94 votes to 4, with 18 abstentions. In its resolution 2158 (XXI) of 25 November 1966, adopted at its twenty-first session, the General Assembly reaffirmed the inalienable right of all countries to exercise permanent sovereignty over their natural resources in the interest of their national development, in conformity with the spirit and principles of the Charter of the United Nations and as recognized in General Assembly resolution 1803 (XVII). It declared, therefore, that the United Nations should undertake a maximum concerted effort to channel its activities so as to enable all countries to exercise that right fully. It stated that such an effort should help in achieving the maximum possible development of the natural resources of the developing countries and in strengthening their ability to undertake this development themselves, so that they might effectively exercise their choice in deciding the manner in which the exploitation and marketing of their natural resources should be carried out. It confirmed that the exploitation of natural resources in each country should always be conducted in accordance with its national laws and regulations. It recognized the right of all countries, and in particular of the developing countries, to secure and increase their share in the administration of enterprises which are fully or partly operated by foreign capital and to have a greater share in the advantages and profits derived therefrom on an equitable basis, with due regard to the development needs and objectives of the peoples concerned and to mutually acceptable contractual practices; and it called upon the countries from which such capital originates to refrain from any action which would hinder the exercise of that right. It considered that, when natural resources of the developing countries are exploited by foreign investors, the latter should undertake proper and accelerated training of national personnel at all levels and in all fields connected with such exploitations; it called upon the developed countries to make available to the developing countries, at their request, assistance, including capital goods and know-how, for the exploitation and marketing of their natural resources in order to accelerate their economic development, and to refrain from placing on the world market non-commercial reserves of primary commodities which could have an adverse effect on the foreign exchange earnings of the developing countries.

449. In resolution 2173 (XXI) of 6 December 1966, entitled "Development of natural resources", the General Assembly recalled Economic and Social Council resolutions 1113 (XL) of 7 March 1966 and 1127 (XLI) of 26 July 1966 regarding the development of natural resources and endorsed the continuing study by the Economic and Social Council of the means of implementing a five-year survey programme for the development of natural resources, intended to strengthen the economic base and the economic independence of the developing countries.

450. At its twenty-third session, in resolution 2386 (XXIII) of 19 November 1968, the General Assembly considered that "the full exercise of permanent sovereignty over natural resources will play an important role in the achievement of the goals of the Second United Nations Development Decade". At its twenty-fourth session, in the Declaration on Social Progress and Development (resolution

2542 (XXIV) of 11 December 1969), the General Assembly considered the permanent sovereignty of each nation over its natural wealth and resources as one of the primary conditions of social progress and development.

451. In its resolution 2692 (XXV) of 11 December 1970, adopted at its twenty-fifth session, the General Assembly recognized the importance of the positive experience gained by the developing countries in the exercise of their sovereignty over their natural resources for the purpose of the increased mobilization of domestic resources for development and of drawing up and implementing their national development plans; it recognized also that such experience would be conducive to revitalizing the efforts being undertaken at the national level for the economic development of the developing countries. It further recognized the necessity for all countries to exercise fully their rights, so as to secure the optimal utilization of their natural resources, both land and marine, for the benefit and welfare of their peoples and for the protection of their environment. It reaffirmed the right of peoples and nations to permanent sovereignty over their natural wealth and resources, which must be exercised in the interest of their national development and of the well-being of the people of the State concerned, and recognized that the exercise of permanent sovereignty over their natural resources by developing countries is indispensable in order that they may, *inter alia*, accelerate their industrial development. In that connexion, it stressed the important role of the appropriate organizations of the United Nations system in the promotion of specific industrial projects dealing with the natural resources of developing countries.

452. The Security Council also affirmed the principle of permanent sovereignty of peoples over their natural wealth and resources in resolution 330 (1973) of 21 March 1973, which reads:

The Security Council,

Recalling General Assembly resolutions 1803 (XVII) of 14 December 1962 and 3016 (XXVII) of 18 December 1972 concerning permanent sovereignty over natural resources,

Reaffirming General Assembly resolution 2625 (XXV) of 24 October 1970, which states that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind,

Further recalling General Assembly resolution 2993 (XXVII) of 15 December 1972 on implementation of the Declaration on the Strengthening of International Security, in particular paragraph 4 thereof,

Noting with deep concern the existence and use of coercive measures which affect the free exercise of permanent sovereignty over the natural resources of Latin American countries,

Recognizing that the use or encouragement of the use of coercive measures may create situations likely to endanger peace and security in Latin America,

1. *Urges* States to adopt appropriate measures to impede the activities of those enterprises which deliberately attempt to coerce Latin American countries;

2. *Requests* States, with a view to maintaining and strengthening peace and security in Latin America, to refrain from using or encouraging the use of any type of coercive measures against States of the region.

This resolution was adopted at the 1704th meeting of the Council by 12 votes to none, with 3 abstentions.

453. In paragraph 1 of its resolution 88 (XII),¹⁴⁵ approved by the United Nations General Assembly in resolu-

¹⁴⁴ *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), p. 10.

¹⁴⁵ See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 15 (A/8715/Rev.1), Part One, annex I.*

tion 3041 (XXVII) of 19 December 1972, the Trade and Development Board reaffirmed the sovereign right of all countries freely to dispose of their natural resources for the benefit of their national development in the spirit, and in accordance with the principles of the Charter of the United Nations”.

454. At its twenty-eighth session, the General Assembly reiterated (resolution 3171 (XXVIII) of 17 December 1973) that the inalienable right of each State to the full exercise of national sovereignty over its natural resources had been repeatedly recognized by the international community in numerous resolutions of various organs of the United Nations and that an intrinsic condition of the exercise of the sovereignty of every State was that it be exercised fully and effectively over all the natural resources of the State, whether found on land or in the sea. It reaffirmed the inviolable principle that every country has the right to adopt the economic and social system which it deems most favourable to its development. It recalled, in particular, the Declaration on Principles of International law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, pointing out that the Declaration proclaims that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. It considered that the full exercise by each State of sovereignty over its natural resources was an essential condition for achieving the objectives and targets of the Second United Nations Development Decade, and that this exercise required that actions by States aimed at achieving a better utilization and use of those resources must cover all stages, from exploration to marketing.

455. In that very resolution, the General Assembly strongly reaffirmed the inalienable rights of States to permanent sovereignty over all their natural resources on land within their international boundaries, as well as those in the sea-bed and the sub-soil thereof within their national jurisdiction and in the superjacent waters. It supported resolutely the efforts of the developing countries and of the peoples of the territories under colonial and racial domination and foreign occupation in their struggle to regain effective control over their natural resources. It affirmed that the application of the principle of nationalization carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implied that each State was entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation of each State carrying out such measures. It deplored acts of States which use force, armed aggression, economic coercion or any other illegal or improper means in resolving disputes concerning the exercise of the sovereign rights in question. It re-emphasized that actions, measures or legislative regulations by States aimed at coercing, directly or indirectly, other States or peoples engaged in the reorganization of their internal structure or in the exercise of their sovereign rights over their natural resources, both on land and in their coastal waters, were in violation of the Charter of the United Nations and of the Declaration contained in General Assembly resolution 2625 (XXV) and contravened the targets, objectives and policy measures of the International Development Stra-

tegy for the Second United Nations Development Decade, and that to persist therein could constitute a threat to international peace and security. It emphasized the duty of all States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the territorial integrity of any State and the exercise of its national jurisdiction. It recognized that, as stressed in Economic and Social Council resolution 1737 (LIV) of 4 May 1973, one of the most effective ways in which the developing countries could protect their natural resources was to establish, promote or strengthen machinery for co-operation among them which had as its main purpose to concert pricing policies, to improve conditions of access to markets, to co-ordinate production policies and, thus, to guarantee the full exercise of sovereignty by developing countries over their natural resources.

456. At its twenty-eighth, twenty-ninth and thirtieth sessions, in its resolutions 3175 (XXVIII) of 17 December 1973, 3336 (XXIX) of 17 December 1974, and 3516 (XXX) of 15 December 1975, the General Assembly affirmed the right of the Arab States and peoples whose territories were under foreign occupation to permanent sovereignty over all their natural resources, reaffirmed that all measures undertaken by Israel to exploit the human and natural resources of the occupied Arab territories were illegal and called upon Israel to halt such measures forthwith. It affirmed the right of the Arab States and peoples whose territories were under Israeli occupation to the restitution of, and full compensation for the exploitation and looting of, and damage to, the natural resources, as well as the exploitation and manipulation of the human resources, of the occupied territories. It declared that the above principles applied to all States, territories and peoples under foreign occupation, colonial rule or *apartheid*.

457. In resolution 46 (III) of 18 May 1972, entitled “Steps to achieve a greater measure of agreement on principles governing international trade relations and trade policies conducive to development”, adopted by the United Nations Conference on Trade and Development at its third session, principle II governing international trade relations and trade policies conducive to development states that

Every country has the sovereign right freely to dispose of its natural resources in the interest of the economic development and well-being of its own people; any external, political or economic measures or pressure brought to bear on the exercise of this right is a flagrant violation of the principles of self-determination of peoples and non-intervention, as set forth in the Charter of the United Nations and, if pursued, could constitute a threat to international peace and security.¹⁴⁶

458. Paragraph 4 of the Declaration on the Establishment of a New International Economic Order (resolution 3201 (S-VI) of 1 May 1974) states that the new international economic order should be founded on full respect for principles which include:

[...]

(e) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent

¹⁴⁶ *Proceedings of the United Nations Conference on Trade and Development, Third Session, vol. I, Report and Annexes* (United Nations publication, Sales No. E.73.II.D.4), annex I, A, pp. 59-60.

sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right;

(f) The right of all States, territories and peoples under foreign occupation, alien and colonial domination or *apartheid* to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples;

[...]

(h) The right of the developing countries and the peoples of territories under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities.

459. In section VIII of the Programme of Action on the Establishment of a New International Economic Order, (resolution 3202 (S-VI)) entitled "Assistance in the exercise of permanent sovereignty of States over natural resources", the General Assembly stated that

All efforts should be made:

(a) To defeat attempts to prevent the free and effective exercise of the rights of every State to full and permanent sovereignty over its natural resources;

(b) To ensure that competent agencies of the United Nations system meet requests for assistance from developing countries in connexion with the operation of nationalized means of production.

460. At its twenty-ninth session, the General Assembly adopted resolution 3281 (XXIX), containing the Charter of Economic Rights and Duties of States, article 2 of which provides that:

Article 2

1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

2. Each State has the right:

(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;

(b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph;

(c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

During the discussion of the article in the Second Committee, the following amendment was proposed:

Article 2

1. Every State has permanent sovereignty over its natural wealth and resources and has the inalienable right fully and freely to dispose of them.

2. Each State has the right:

(a) to enact legislation and promulgate rules and regulations, consistent with its development objectives, to govern the entry and activities within its territory of foreign enterprises;

(b) to enter freely into undertakings relating to the import of foreign capital which shall be observed in good faith;

(c) to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply fully with its laws, rules and regulations and conform with its economic and social policies. Every State shall ensure that transnational corporations enjoy within its national jurisdiction the same rights and fulfil the same obligations as any other foreign person. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph;

(d) to nationalize, expropriate or requisition foreign property for a public purpose, provided that just compensation in the light of all relevant circumstances shall be paid;

(e) to require that its national jurisdiction be exhausted in any case where the treatment of foreign investment or compensation therefore is in controversy, unless otherwise agreed by the parties;

(f) to settle disputes where so agreed by the parties concerned through negotiation, good offices, inquiry, factfinding, conciliation, mediation, arbitration or judicial settlement, on the basis of the principles of sovereign equality of States and free choice of means;

3. States taking measures in the exercise of the foregoing rights shall fulfil in good faith their international obligations.¹⁴⁷

The amendment was rejected by 71 votes to 20, with 18 abstentions. Article 2 of the Charter of Economic Rights and Duties of States was adopted by the following votes: paragraph 1, by 119 votes to 9, with 3 abstentions; paragraph 2 (a), by 113 votes to 10, with 4 abstentions; paragraph 2 (b), by 119 votes to 4, with 6 abstentions; paragraph 2 (c), by 104 votes to 16, with 6 abstentions.¹⁴⁸

461. The "Economic Declaration" of the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973, states in sections VII and VIII that:

In view of the seriousness of the problems with which they are faced, developing countries realize more than ever before the vital necessity of making every possible effort to consolidate their national independence and reinforce their fighting front by challenging imperialist and neo-colonial exploitation structures, and by organizing co-operation and solidarity with one another in inter-continental and regional organizations. The action taken in the non-aligned countries after the Belgrade, Cairo, Lusaka and Georgetown Conferences, the decline of colonial and neo-colonial groupings, the strengthening of the unity of action of the Group of 77, particularly on the basis of the Charter of Algiers and the Lima Declaration, and regional co-operation and integration activities, are all steps marking the transition from passive submission of claims to the affirmation of the developing countries' determination to rely first and foremost on their own resources, individually and collectively, to take over the defence of their fundamental interests and to organize their development by and for themselves.

The Heads of State or Government, while recalling the inviolable principle that every country has the right to adopt the economic and social system which it deems most favourable to development, reaffirm each country's inalienable right to the full exercise of national sovereignty over its natural resources and all domestic economic activities.

Any infringement of the right of effective control by any State over its natural resources and their exploitation by means suited to its own situation, having respect for the ecological balance, including nationalization and the transfer of property to its nationals, is contrary to the aims and principle of the United Nations Charter and hampers the development of international co-operation as well as the maintenance of international peace and security.

The Conference gives its unreserved support to the application of the principle that nationalization carried out by States as an expres-

¹⁴⁷ *Official Records of the General Assembly, Twenty-ninth session, Annexes*, agenda item 48, document A/9946, para. 6 (g).

¹⁴⁸ *Ibid.*, para 18 (a) and para. 22.

sion of their sovereignty, in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and its mode of payment, and that any disputes which might arise should be settled in accordance with the national legislation of each State.

The non-aligned countries give their ready and unreserved support to the developing countries and to the territories under colonial domination which are subject to boycott, economic aggression or political pressure and are struggling to recover effective control over their natural resources and over economic activities which are still under foreign domination.

In this connection, the Heads of State or Government recommend the establishment of effective solidarity bodies for the defence of the interests of raw material producing countries such as OPEC [Organization of Petroleum Exporting Countries] and CIPEC [Inter-Governmental Committee of Copper Exporting Countries], which are capable of undertaking wide-ranging activities in order to recover natural resources and ensure increasingly substantial export earnings and income in real terms, and to use these resources for development purposes and to raise the living standards of their peoples.

The results obtained in the hydrocarbons sector, which was previously exploited for the sole benefit of the transnational oil companies, demonstrate the power and effectiveness of organized and concerted action by producing and exporting countries.

Similarly, the determination of an increasing number of developing countries to terminate treaties, agreements and conventions imposed on them by force and violence, is producing increasingly positive results. This process should be extended, accelerated and co-ordinated in Latin America, Asia, Africa, the Middle East, and in other developing countries, in order to strengthen solidarity among the developing countries, reverse the trend towards a deterioration of their situation and secure the establishment of a new international economic order which would meet the requirements of genuine democracy.

The non-aligned countries decide to use all possible means so that the global approach for the achievement of the aforementioned objectives is accepted by the international community, which would take the fullest possible account of the provisions contained *inter alia*, in the Charter of Algiers, the Lusaka Declaration, the Lima Declaration and the Georgetown Action Programme.

[...] The Heads of State or Government denounce before world public opinion the unacceptable practices of transnational companies which infringe the sovereignty of developing countries and violate the principles of non-interference and the right of peoples to self-determination, which are basic prerequisites for their political, economic and social progress.

The Conference also recommends that steps be taken by non-aligned countries for joint action on transnational companies, within the framework of a global strategy designed to modify qualitatively and quantitatively the system of economic and financial relations which subordinates developing countries to industrialized countries.¹⁴⁹

462. The permanent sovereignty of peoples and States over their natural wealth and resources represents one of the results of the affirmation by nations and States of the right to self-determination, a process characteristic of the evolution of the modern world. The realization by peoples of the right to self-determination, of their sovereign right to be master in their own house, is becoming more and more a governing principle in present-day historical development and an expression of the need for a new policy in international life.

463. The sovereignty and political independence of States can only be ensured by their economic independence. The specific wealth which they own is what enables States to take part in international trade, economic co-operation and the international division of labour. International trade in goods and the mutual exchange of material assets and spiritual values contribute to the well-being and advance-

ment of peoples, provided they do not violate the sovereignty of States. The economic independence of a country can only be ensured under conditions of international co-operation based on equality, equity and mutual benefit, in which respect is paid to the right of States to dispose freely of their natural wealth and resources in accordance with their national interests. This right derives from the Charter of the United Nations and the resolutions adopted by the General Assembly; any infringement of the rights of States and peoples to sovereignty over their natural wealth and resources constitutes a violation of the spirit and principles of the Charter and hampers the development of international co-operation and the maintenance of normal and peaceful relations between States.

464. The right of permanent sovereignty over natural wealth and resources is a fundamental element in the right to self-determination, since economic independence cannot be guaranteed unless peoples enjoy the right to possess, use and develop their natural wealth and resources in their own interest; accordingly, without that enjoyment, sovereign political independence cannot be maintained. At the same time, the permanent sovereignty of peoples over their natural wealth and resources constitutes a fundamental element in the development of all peoples and a means of eliminating the gap between rich and poor countries, its aim being to ensure the utilization of this wealth and these resources by and for the people which owns them, as a key to its economic and social progress. By securing the enjoyment of this right of peoples, the international community will eliminate a primary cause of under-development, namely the situation in which imperialist, colonialist or neo-colonialist policies and relations of inequality and subordination have prevented peoples from utilizing their own natural wealth and resources for their own benefit. Respect for the right of peoples to dispose of their own natural wealth and resources and to use them in their own interests is therefore a prerequisite for the elimination of under-development, a first stage in the development of international co-operation for development; its effective, complete and universal realization is an indispensable condition for the establishment of a new international economic order.

465. In a wider context, permanent sovereignty over natural resources is closely linked with other principles of modern international law, such as the right of each State to a free existence, the sovereign equality of States, equality under the law, the right of all peoples to development and progress, the right to peace and security, non-intervention in the internal affairs of other States and peoples, respect for their sovereignty and independence and abstention from force or the threat of force in international relations. The sovereignty of peoples over their natural wealth and resources has acquired, by recognition in the International Covenants on Human Rights, the character of a legal norm and a rule of modern international law. Also, it plays a fundamental part in the present formation of the international law of development.

466. Permanent sovereignty over natural wealth and resources is vested in peoples themselves, by virtue of their right of self-determination, whether or not they constitute independent States. Permanent sovereignty is therefore a component part of the over-all sovereignty of each State, exercised in the name of the people by the competent organs of the State.

¹⁴⁹ See A/9330 and Corr.1, pp. 57-74.

467. The content of the right of permanent sovereignty of peoples and States over the natural wealth and resources may be characterized in terms of the right of the State to regulate by its own laws all activities and legal relationships in its own territory and place these under its own jurisdiction.

468. The sovereignty of the State over its natural wealth and resources is permanent and indivisible and, by virtue of this sovereignty, the State may order the nationalization of those resources, prohibit their exploitation by private individuals and lay down the conditions under which exploitation by private individuals may be permitted. The State may, pursuant to the same right, prohibit or impose conditions on the access of foreign capital to the development of the country's wealth and natural resources.

469. The right of nationalization derives from the sovereignty of States and is within their sole competence. This right was recognized and reaffirmed by the General Assembly resolution 626 (VII) of 21 December 1952, entitled "Right to exploit freely natural wealth and resources", in which the Assembly, recalling

that the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the Purposes and Principles of the Charter of the United Nations,

recommended

[...] all Member States to refrain from acts, direct or indirect, designed to impede the exercise of the sovereignty of any State over its natural resources

Nationalization is a sovereign act of the State whereby assets previously in private ownership are declared the property of the State. Nationalization measures apply to all property, whether or not located within the national territory. The legality of nationalization as a manifestation of State sovereignty was recognized by the International Court of Justice in its judgment of 22 July 1952 in the *Anglo-Iranian Oil Co. case* rejecting the double character of the contract between the Government of Iran and the Anglo-Persian Oil Company. The judgment included the following passage:

The Court cannot accept the view that the contract signed between the Iranian Government and the Anglo-Persian Oil Company has a double character. It is nothing more than a concessionary contract between a government and a foreign corporation. The United Kingdom Government is not a party to the contract; there is no privity of contract between the Government of Iran and the Government of the United Kingdom [...]

This juridical situation is not altered by the fact that the concessionary contract was negotiated and entered into through the good offices of the Council of the League of Nations, acting through its Rapporteur. The United Kingdom, in submitting its dispute with the Iranian Government to the League Council, was only exercising its right of diplomatic protection in favour of one of its nationals. [...] The final report by the Rapporteur to the Council on the successful conclusion of a new concessionary contract between the Iranian Government and the Company gave satisfaction to the United Kingdom Government [...]

[...] The fact that the concessionary contract was reported to the Council and placed in its records does not convert its terms into the terms of a treaty by which the Iranian Government is bound vis-à-vis the United Kingdom Government [...]

The conclusion of the new concessionary contract removed the cause of a complaint by the United Kingdom against Iran. It did not regulate any public matters directly concerning the two Governments. It could not possibly be considered to lay down the law between the two States.

It is thus clear that the proceedings before the Council of the League of Nations which led up to the settlement in 1933 of the

dispute between the United Kingdom and Iran relating to the D'Arcy Concession, did not result in the conclusion of any treaty or convention between the two countries.

[...] the Court must conclude that the dispute brought before it by the United Kingdom is not one of those disputes arising 'in regard to situations or facts relating directly or indirectly to the application of treaties or conventions accepted by Persia and subsequent to the ratification of this Declaration'. Consequently, the Court cannot derive jurisdiction in the present case from the terms of the Declaration ratified by Iran [in] 1932.¹⁵⁰

470. For newly independent States, nationalization is a means of achieving economic independence and utilizing natural wealth and resources for the development of the national economy. Nationalization measures, which eliminate unfair foreign concessions, are a part of the struggle of peoples for national liberation. The principles and manner of nationalization in these countries will differ according to each country's objectives, the aim being economic independence. Nationalization measures of this kind, the cancellation of foreign concessions and the elimination of national private capital have already been or are being put into effect in many independent States. The right of any State to nationalize private property, including that of foreigners, cannot now be called in question. The State has the sole right, by virtue of its sovereignty, to regulate questions relating to ownership, acquisition, transfer and deprivation of property. Since the nationalization of the property of foreigners is an act of sovereignty, it cannot be reviewed or challenged at law by other States or by international organizations.

471. Blackmail, economic pressure and even force are employed to undermine the right of the State to its natural wealth and resources and its right to nationalize property. Nationalization has an important political and economic function and considerable significance in promoting economic and social progress. Nationalization measures as acts of development are a means of eliminating enclaves represented by foreign undertakings which no longer serve national interests, of incorporating those undertakings in the national economy and of managing and using them in the national interest. In the exercise of permanent sovereignty over its natural wealth and resources, the State enjoys full freedom of decision, by virtue of its national competence and in accordance with national development needs, in regard to the purposes for which nationalization is to be undertaken. It is also the State, by virtue of the same sovereignty, which determines what compensation is to be granted in respect of nationalization.

472. By virtue of its permanent sovereignty, the State has the right to increased participation in the management of undertakings operated by means of foreign capital and to an increased share of their income, the right to determine the conditions of participation by foreign investors in the exploitation of its natural resources and the right to alter and cancel concessionary contracts. In cases of nationalization, the judicature of the nationalizing State will determine the amount of compensation. However, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States¹⁵¹ provides machinery for the settlement of legal disputes of this type by conciliation and arbitration under the auspices of the International Bank for Reconstruction and Development.

¹⁵⁰ *Anglo-Iranian Oil Co. case* (jurisdiction), Judgment of July 22nd, 1952, *I.C.J. Reports* 1952, p. 93.

¹⁵¹ United Nations, *Treaty Series*, vol. 575, pp. 159 *et seq.*

473. Another very important and topical aspect of the exercise of permanent sovereignty by States over their natural wealth and resources is the control which States are entitled to exercise over transnational corporations. In 1974, a group of eminent persons prepared a report entitled *The Impact of Multinational Corporations on Development and on International Relations*,¹⁵² which was based on the document *Multinational Corporations in World Development*,¹⁵³ drawn up by the Department of Economic and Social Affairs, on the work of the group itself and on testimony which it heard. The report recommended the creation of a standing commission consisting of persons with a profound knowledge of the questions involved. Also in 1974, the Economic and Social Council decided to set up an intergovernmental commission on transnational corporations and an information and research centre on transnational corporations.

474. The General Assembly, in the Programme of Action on the Establishment of a New International Economic Order (resolution 3202 (S-VI)), made the following recommendations concerning regulation and control of the activities of transnational corporations:

All efforts should be made to formulate, adopt and implement an international code of conduct for transnational corporations:

(a) To prevent interference in the internal affairs of the countries where they operate and their collaboration with racist régimes and colonial administrations;

(b) To regulate their activities in host countries, to eliminate restrictive business practices and to conform to the national development plans and objectives of developing countries, and in this context facilitate, as necessary, the review and revision of previously concluded arrangements;

(c) To bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms;

(d) To regulate the repatriation of the profits accruing from their operations, taking into account the legitimate interests of all parties concerned;

(e) To promote reinvestment of their profits in developing countries.

475. At its thirtieth session the General Assembly, in resolution 3514 (XXX) of 15 December 1975 entitled "Measures against corrupt practices of transnational and other corporations, their intermediaries and others involved", declared its concern at the corrupt practices of certain transnational and other corporations, their intermediaries and others involved. It condemned all corrupt practices, including bribery, by transnational and other corporations, their intermediaries and others involved, in violation of the laws and regulations of the host countries; it reaffirmed the right of any State to adopt legislation and to investigate and take appropriate legal action, in accordance with its national laws and regulations, against transnational and other corporations, their intermediaries and others involved, for such corrupt practices. It called upon both home and host Governments to take, within their respective national jurisdictions, all necessary measures which they deemed appropriate, including legislative measures, to prevent such corrupt practices, and to take consequent measures against the violators; it called upon Governments to collect information on such corrupt practices, as well as on measures taken against such practices, and to exchange information bilaterally and, as appropriate, multilaterally,

particularly through the United Nations Centre on Transnational Corporations; and invited home Governments to co-operate with Governments of the host countries to prevent such corrupt practices, including bribery, and to prosecute, within their national jurisdictions, those who engaged in such practices.

476. The question of succession of States is also of particular importance in connexion with the exercise of permanent sovereignty over natural wealth and resources. This has been repeatedly emphasized in resolutions of the General Assembly of the United Nations, which asked the International Law Commission to study this topic with a view to its progressive development and codification. In response to this request, draft articles on the succession of States in respect of treaties were prepared by the International Law Commission at its twenty-sixth session and were considered by the United Nations Conference on Succession of States in respect of Treaties, the first session of which was held at Vienna at April-May 1977. Part of the report of the International Law Commission containing these draft articles examines the principle of self-determination and the law relating to succession in respect of treaties. The paragraphs concerned read as follows:

THE PRINCIPLE OF SELF-DETERMINATION AND THE LAW RELATING TO SUCCESSION IN RESPECT OF TREATIES

57. The Commission has taken account of the implications of the principles of the Charter of the United Nations, in particular self-determination, in the modern law concerning succession in respect of treaties. For this reason it has not felt able to endorse the thesis put forward by some jurists* that the modern law does, or ought to, make the presumption that a "newly independent State" consents to be bound by any treaties previously in force internationally with respect to its territory, unless within a reasonable time it declares a contrary intention. Those who advocate the making of that presumption are no doubt influenced by the ever-increasing interdependence of States, the consequential advantages of promoting the continuity of treaty relations in cases of succession and the considerable extent to which in the era of decolonization newly independent States have accepted the continuance of the treaties of the predecessor States. The presumption, however, touches a fundamental point of principle affecting the general approach to the formulation of the law relating to the succession of a newly independent State.

58. The Commission, after a study of State and depositary practice, concluded that in modern international law, having regard to the need for the maintenance of the system of multilateral treaties and of the stability of treaty relationships, as a general rule the principle of *de jure* continuity should apply. On the other hand, the "traditional" principle that a "new State" begins its treaty relations with a clean slate, if properly understood and limited, was in the opinion of the Commission more consistent with the principle of self-determination as it is applicable in the case of newly independent States. The clean slate principle was well-designed to meet the situation of newly independent States, namely, those which emerge from former dependent territories. Consequently, the Commission was of the opinion that the main implication of the principle of self-determination in the law concerning succession in respect of treaties was precisely to confirm the traditional clean slate principle as the underlying norm for cases of newly independent States or for cases that may be assimilated to them.

59. The "clean slate" metaphor, the Commission wished to emphasize, is merely a convenient and succinct way of referring to the newly independent State's general freedom from obligation in respect of its predecessor's treaties. But that metaphor is misleading if account is not taken of other principles which affect the position

¹⁵² United Nations publication, Sales No. E.74.II.A.5.

¹⁵³ United Nations publication, Sales No. E.73.II.A.11.

* See International Law Association, *Report of the Fifty-third Conference, Buenos Aires, 1968* (London, 1969), pp. xiii-xv (Resolutions) and 596-632 (Interim Report of the Committee on the Succession of New States to the Treaties and Certain Other Obligations of their Predecessors).

of a newly independent State in relation to its predecessor's treaties. In the first place, as the commentaries to articles 16 and 17 make clear, modern treaty practice recognizes that a newly independent State has the right under certain conditions to establish itself as a "party" or as a "contracting State" to any multilateral treaty, except one of a restricted character, in regard to which its predecessor State was either a "party" or a "contracting State" at the date of the succession of States. In other words, the fact that prior to independence the predecessor State had established its consent to be bound by a multilateral treaty and its act of consent related to the territory now under the sovereignty of the newly independent State creates a legal nexus between that territory and the treaty in virtue of which the newly independent State has the right, if it wishes, to participate in the treaty on its own behalf as a separate party or contracting State. In the case of multilateral treaties of a restricted character and bilateral treaties, the newly independent State may invoke a similar legal nexus between its territory and the treaty as a basis for achieving the continuance in force of the treaty with the consent of the other State or States concerned. Accordingly, the so-called clean slate principle, as it operates in the modern law of succession of States, is very far from normally bringing about a total rupture in the treaty relations of a territory which emerges as a newly independent State. The modern law, while leaving the newly independent State free under the clean slate principle to determine its own treaty relations, holds out to it the means of achieving the maximum continuity in those relations consistent with the interests of itself and of other States parties to its predecessor's treaties. In addition, the clean slate principle does not, in any event, relieve a newly independent State of the obligation to respect a boundary settlement and certain other situations of a territorial character established by treaty.

60. The principal new factor which has appeared in the practice regarding succession of States during the United Nations period has been the use of agreements, commonly referred to as "devolution" or "inheritance" agreements, which are concluded between a predecessor and successor State and provide for the continuity of treaty rights and obligations or, alternatively, "unilateral declarations" by a successor State designed to regulate its treaty position after the succession of States. As to devolution agreements, quite apart from any question that may arise concerning their legal validity under the general law of treaties, it is clear that a devolution agreement cannot by itself alter the position of a successor State vis-à-vis other States parties to the predecessor State's treaties. The same is true *a fortiori* of purely unilateral declarations. In short, however useful such instruments as devolution agreements and unilateral declarations may be in promoting continuity of treaty relations, they still leave the effects of a succession of States to be governed essentially by the general law concerning succession in respect of treaties.¹⁵⁴

477. The question of permanent sovereignty over natural resources is closely linked with that of raw materials. Measures aimed at establishing a just relationship between raw material prices and those of manufactured products are central to the establishment of a new international economic order. The prices of all products, both raw materials and manufactures, must be stabilized on the basis of agreed solutions. Countries possessing raw materials should be paid for them at prices commensurate with the work which goes into the exploitation of these raw materials and with their economic and social value. At the same time, manufactured products should be supplied at prices which do not cancel out the advantages gained through a reasonable level of raw material prices and which, at the same time, provide the necessary stimulus for the continuous development of industrial activity. The crisis in raw materials and energy resources coincided with the stir caused by a number of previously published studies prophesying the imminent exhaustion of the world's natural resources.

478. The idea of the imminent exhaustion of the world's natural resources, which it was said would mean zero

growth for the human race, is based on extrapolation of the present growth rate for world raw materials consumption and on a static view of the reserves available on our planet. However, analysis has shown that, although natural resources are limited in absolute terms, their consumption curve as a function of economic growth is not exponential and consequently imposes no limitation on growth. Real progress by the human race in the future is hard to conceive unless we reject the alternatives both of a consumer society based on the exhaustion of cheap resources imported from the vast expanses of the poor part of the world, and of a growth rate reduced to complete stagnation. At the same time, the action needed to ensure the basic supply of raw materials required for national world growth raises serious and urgent questions for the international community. Practical measures must be taken to lead the human race out of this major impasse.

479. The General Assembly, in the Programme of Action on the Establishment of a New International Economic Order, made the following recommendations in respect of raw materials:

All efforts should be made:

(a) To put to an end all forms of foreign occupation, racial discrimination, *apartheid*, colonial, neo-colonial and alien domination and exploitation through the exercise of permanent sovereignty over natural resources;

(b) To take measures for the recovery, exploitation, development, marketing and distribution of natural resources, particularly of developing countries, to serve their national interests, to promote collective self-reliance among them and to strengthen mutually beneficial international economic co-operation with a view to bringing about the accelerated development of developing countries;

(c) To facilitate the functioning and to further the aims of producers' associations, including their joint marketing arrangements, orderly commodity trading, improvement in the export income of producing developing countries and in their terms of trade, and sustained growth of the world economy for the benefit of all;

(d) To evolve a just and equitable relationship between the prices of raw materials, primary commodities, manufactured and semi-manufactured goods exported by developing countries and the prices of raw materials, primary commodities, food, manufactured and semi-manufactured goods and capital equipment imported by them, and to work for a link between the prices of exports of developing countries and the prices of their imports from developed countries;

(e) To take measures to reverse the continued trend of stagnation or decline in the real price of several commodities exported by developing countries, despite a general rise in commodity prices, resulting in a decline in the export earnings of these developing countries;

(f) To take measures to expand the markets for natural products in relation to synthetics, taking into account the interests of the developing countries, and to utilize fully the ecological advantages of these products;

(g) To take measures to promote the processing of raw materials in the producer developing countries.

480. Price fluctuations in international markets have now become sufficiently great to create a world-wide state of economic insecurity, with adverse effects on the national programmes of all countries and in particular of the developing countries. It is therefore becoming more and more obvious that, if international economic relations are to progress in a proper manner, principles must be worked out and specific measures taken to prevent speculative fluctuations, to put an end to artificial rises and falls in prices and to ensure price stability over periods of several years. With this end in view, the United Nations Conference on Trade and Development at its fourth session, held at Nairobi in

¹⁵⁴ *Yearbook of the International Law Commission, 1974, vol. II, Part One, pp. 157 et seq., Document A/9610/Rev.1, chap. II, paras. 57-60.*

1976, drew up the Integrated Programme for Commodities¹⁵⁵ (resolution 93 (IV), of 30 May 1976), which provides for concerted action to transform the world commodities' economy so as to improve the terms of trade of developing countries and to correct the economic imbalance between rich and poor nations.

481. Raw materials and energy have become the vital questions of our time and govern the very future of human civilization. The problem can only be settled finally by far-reaching international co-operation to achieve the most effective technical and economic action for developing the known resources of raw materials and energy, eliminating waste, using raw materials and energy rationally and guaranteeing every people natural control over its own wealth and over all research, prospection and development activities. It is also necessary to draw up a programme for the discovery and utilization of new sources of energy which will facilitate wider international co-operation and the development, on the basis of satisfactory arrangements, of the knowledge acquired in this field by a number of developed countries, and which will ensure the unfettered development of the forces of production and the general advancement of humanity as a whole.

482. Against the background of the steadily increasing interdependence of States, particular importance attaches to the adoption of concrete measures to establish a just relationship between raw material prices and those of manufactures, taking into account production costs and the utilization value of the goods. This relationship should be such as to accelerate the development of raw material producer countries and at the same time ensure a reasonable return to the manufacturers of industrial products, stimulate productive activity in all countries of the world and facilitate and strengthen the efforts being made to accelerate the advancement of the least developed countries.

K. Industrial development

483. The developing countries of the world today have only 7 per cent of the world's industry; the remainder is concentrated in the wealthy countries where environmental pollution is consequently a major and increasing serious problem. The developing countries export the bulk of their raw materials, which are then processed in the developed countries; they thus lose for their own populations the job opportunities and wealth generated by manufacturing industries.

484. In view of that situation, which is a worsening one, the United Nations has given special attention to the question of the industrialization of the developing countries.

485. As long ago as its eleventh session, in its resolution 1033(XI) A and B, of 26 February 1957, the General Assembly recognized that industrialization is a precondition for the economic development of the under-developed countries. It also recognized the need for appropriate structural arrangements, within the framework of the United Nations and under the auspices of the Economic and Social Council, for dealing with questions of industrialization and productivity.

¹⁵⁵ *Proceedings of the United Nations Conference on Trade and Development, Fourth Session, vol. I, Report and Annexes* (United Nations publication, Sales No. E.76.II.D.10), pp. 6-9.

486. The General Assembly's concern for industrial development has deepened with successive sessions. It has adopted resolutions on the possibilities of international co-operation in the development of the oil industry in developing countries, on industrial development banks and development corporations and on the Commission for Industrial Development, United Nations action in the field of industrial development and the establishment of the United Nations Industrial Development Organization. The actions and main objectives with regard to industrial development were spelled out in full for the first time in the International Development Strategy for the Second United Nations Development Decade (resolution 2626 (XXV), of 24 October 1970).

487. A major step towards solving the problem of industrialization was taken in 1975 when the Second General Conference of UNIDO met at Lima and published a Declaration and Plan of Action on Industrial Development and Co-operation¹⁵⁶ providing for the redistribution of the world's industry so as to give the developing countries a 25 per cent share of it by the year 2000. In the Declaration, the Conference recognized

that problems of industrial development in developing countries at their present stage of development do not lie entirely in those countries but also arise from the policies of most of the developed countries, and that without meaningful changes in the economic policies of the developed countries, the achievement of the objectives of a new international order would be in serious jeopardy.

It noted the fact

that industrial progress has not displayed significant advances in the developing countries as a whole, in spite of serious efforts on their part, and that, in many cases, the dependence of their economies on the export of primary goods and the measures taken in the majority of developed countries have not made it possible to achieve a profound dynamic effect which would be capable of transforming internal socio-economic structures and laying the basis for real development.

It also noted

that any real process of industrialization worthy of the name must conform to the broad objectives of self-sustaining and integrated socio-economic development and that all countries have the sovereign right to make the necessary changes to ensure the just and effective participation of their peoples in industry and share in the benefits deriving therefrom.

It noted with anxiety

that the present international crisis has aggravated the industrialization problems of the developing countries, resulting, *inter alia*, in the under-utilization of resources, constraints in the planning and execution of industrial projects and increasing costs of industrial inputs, equipment and freight charges.

It stated

that some of the obstacles which are inhibiting industrial expansion in the developing countries are of an internal structural nature, and that there also continue to exist numerous impediments arising from colonial and neo-colonial policies or new forms of dependency.

It considered also

that development assistance is a legitimate need and that neither in its present volume nor form is it sufficient, particularly taking into account the worsening of the terms of trade of the developing countries and the drainage of their resources.

It recommended a radical change in traditional approaches and practices, since the economic expansion of the poor countries could no longer be regarded as a by-product of the growth of the rich countries, pointing out that the developing countries had to develop more quickly than the advanced countries in order to narrow the gap between rich and poor

¹⁵⁶ See foot-note 139 above.

nations. To that end, the Lima Declaration sets out the main principles of industrialization and defines

the means by which the international community as a whole might take action of a broad nature [...] with a view to the establishment of a new international economic order.

In the Declaration, the member States solemnly declare

their firm conviction of the role of industry as a dynamic instrument of growth essential to the rapid economic and social development of the developing countries

and

their firm intention to promote industrial development through concerted measures at the national, subregional, regional, interregional and international levels with a view to modernizing the economies of the developing countries, and in particular those of the least developed countries, and eliminating all forms of foreign political domination and socio-economic exploitation.

The Declaration states that the developed countries

should undertake an objective and critical examination of their present policies and make appropriate changes in such policies so as to facilitate the expansion and diversification of imports from developing countries and thereby make possible international economic relations on a rational, just and equitable basis;

that

effective control over natural resources and the harmonization of policies for their exploitation, conservation, transformation and marketing constitute for developing countries an indispensable condition for economic and social progress

and that

developing countries should lend support to the concept of an integrated and multisectoral approach to industrial development whereby the technological and the socio-economic implications of the process are fully taken into account at both the planning and implementation stages.

The Declaration envisages a process of continuing consultations with a view to the redeployment of world industry and the creation of a new international division of labour. In order to facilitate the achievement of that objective, it has been recommended that UNIDO should become a specialized agency of the United Nations, that it should have a new Industrial Development Fund and that it should assume a central co-ordinating role for altering the industrial map of the world. In the Lima Declaration, the developed countries are invited to eliminate obstacles to trade with the developing countries and to encourage exports of manufactures from those countries. They are invited to restructure their industry so as to deploy some production capacity in the developing countries and to develop technical assistance programmes. They are also requested to co-operate in ensuring that the activities of transnational corporations are in keeping with the economic and social objectives of the developing countries in which they operate. They are further invited to avoid all measures of discrimination or aggression against States exercising their sovereign rights over their own natural resources. All these recommendations are to some degree controversial, but it is encouraging to note that no one questions the general aim of the changes recommended, namely the industrialization of the poor countries.

488. In the Programme of Action on the Establishment of a New International Economic Order (resolution 3202 (S-VI), of 1 May 1974) the General Assembly advocated the following with regard to industrialization:

All efforts should be made by the international community to take measures to encourage the industrialization of the developing countries, and to this end:

(a) The developed countries should respond favourably, within the framework of their official aid as well as international financial

institutions, to the requests of developing countries for the financing of industrial projects;

(b) The developed countries should encourage investors to finance industrial production projects, particularly export-oriented production, in developing countries, in agreement with the latter and within the context of their laws and regulations;

(c) With a view to bringing about a new international economic structure which should increase the share of the developing countries in world industrial production, the developed countries and the agencies of the United Nations system, in co-operation with the developing countries, should contribute to setting up new industrial capacities including raw materials and commodity-transforming facilities as a matter of priority in the developing countries that produce those raw materials and commodities;

(d) The international community should continue and expand, with the aid of the developed countries and the international institutions, the operational and instruction-oriented technical assistance programmes, including vocational training and management development of national personnel of the developing countries, in the light of their special development requirements.

489. In resolution 3362 (S-VII) of 16 September 1975 entitled "Development and international economic co-operation" the General Assembly endorsed the Lima Declaration and Plan of Action on Industrial Development and Co-operation and requested all Governments to take individually and/or collectively the necessary measures and decisions required to implement effectively their undertakings in terms of the Lima Declaration and Plan of Action. It provided that developed countries should facilitate the development of new policies and strengthen existing policies, including labour market policies, which would encourage the redeployment of those of their industries which are less competitive internationally to developing countries, thus leading to structural adjustments in the developed countries and to a higher degree of utilization of natural and human resources in the developing countries; such policies might take into account the economic structure and the economic, social and security objectives of the developed countries concerned and the need for such industries to move into more viable lines of production or into other sectors of the economy.

L. Development in food and agriculture

490. Agriculture lies at the heart of the development problems of many countries, being the sector in which the output and earnings of most of the population arise. It produces food supplies as well as raw materials for industry and in most developing countries represents an important source of foreign exchange earnings and domestic savings; however, the vicious circle of poverty, unemployment, ignorance and disease which is characteristic of the rural sector in a great many developing countries precludes the increase in production needed to sustain vigorous and continuous economic expansion. Solving the problems of agricultural development is essentially an internal matter of national policy, although, as was clearly revealed by the World Food Conference held at Rome in 1974, international aspects are inevitably involved. Each country has its own peculiar blend of resources, problems and objectives, yet the rest of the world can give vital support not only in the technical field but also by helping to reduce pressures on the country's balance of payments and by planning agricultural policies in the common interest. Admittedly, the developing countries account for only 30 per cent of world trade in agricultural products, but three quarters of their exports go to the developed market-economy countries.

491. The United Nations has since manifested its concern about food questions.

492. In its resolutions, for instance, the General Assembly considered that insufficient food production was one of the causes of the malnutrition suffered by a great many people throughout the world; it invited States to give prime importance to measures for avoiding losses as a result of food wastage and pointed out the need for increased food production, national food reserves, the supply of surplus foodstuffs through United Nations bodies to peoples in need of them, and the establishment of a World Food Programme. The General Assembly stated that it was aware of the tremendous growing needs of the populations of the developing countries, of the urgent need to assist those countries in their economic and social advancement, and of the sufferings caused by hunger and malnutrition. It considered that the problem of hunger would be one of the most serious problems the international community would have to face in the future and that it was essential to intensify international co-operation to combat hunger by appropriate means and policies aimed at large-scale international action.

493. The General Assembly stressed the need to combat the world food shortage by increasing food production in the developing countries through multilateral and national measures for solving the immediate and long-term food problems. It also devoted a number of resolutions to the need for increasing the production and consumption of edible protein and expressed concern about the constant gravity and growing magnitude of the protein problem in the developing countries, which is affecting the well-being of mankind.

494. The Universal Declaration on the Eradication of Hunger and Malnutrition and the other resolutions adopted by the World Food Conference¹⁵⁷ are of essential importance in the same connexion.

495. Land reform and the development of arid land are agricultural matters of constant concern to the international community. In its resolutions on these problems, the United Nations General Assembly declared that the existing agrarian system in many under-developed countries was an obstacle to their economic development and the main cause of their inadequate agricultural productivity and the low standard of living of their populations.

496. It recommended that the Governments of Member States should, at the national level and, if necessary, at the regional level, take all possible measures to accelerate the implementation of their land reform programmes and, where appropriate, to bring new land under cultivation to increase their agricultural productivity; it also recommended that Member States should take land reform measures which would permit, *inter alia*, as many cultivators as possible to become landowners, and that they should direct their fiscal and investment policies to increasing the areas under cultivation and improving agricultural production methods. It requested them to implement land reform programmes as part of their economic development plans and to observe the principle of fair treatment in the economic, political and social fields, thus stressing the link between land reform and the enjoyment of the economic, political and social rights of human beings, with a view to improving

the lot of the rural population, respecting freedom to form agricultural associations and fostering general well-being, *inter alia*, by taking measures to give agricultural workers the opportunity of obtaining adequate remuneration.

497. In the Programme of Action on the Establishment of a New International Economic Order, the General Assembly advocated the following with regard to food:

All efforts should be made:

(a) To take full account of specific problems of developing countries, particularly in times of food shortages, in the international efforts connected with the food problem;

(b) To take into account that, owing to lack of means, some developing countries have vast potentialities of unexploited or underexploited land which, if reclaimed and put into practical use, would contribute considerably to the solution of the food crisis;

(c) By the international community to undertake concrete and speedy measures with a view to arresting desertification, salination and damage by locusts or any other similar phenomenon involving several developing countries, particularly in Africa, and gravely affecting the agricultural production capacity of these countries, and also to assist the developing countries affected by any such phenomenon to develop the affected zones with a view to contributing to the solution of their food problems;

(d) To refrain from damaging or deteriorating natural resources and food resources, especially those derived from the sea, by preventing pollution and taking appropriate steps to protect and reconstitute those resources;

(e) By developed countries, in evolving their policies relating to production, stocks, imports and exports of food, to take full account of the interests of:

(i) Developing importing countries which cannot afford high prices for their imports;

(ii) Developing exporting countries which need increased market opportunities for their exports;

(f) To ensure that developing countries can import the necessary quantity of food without undue strain on their foreign exchange resources and without unpredictable deterioration in their balance of payments, and, in this context, that special measures are taken in respect of the least developed, land-locked and island developing countries as well as those developing countries most seriously affected by economic crises and natural calamities;

(g) To ensure that concrete measures to increase food production and storage facilities in developing countries are introduced, *inter alia*, by ensuring an increase in all available essential inputs, including fertilizers, from developed countries on favourable terms;

(h) To promote exports of food products of developing countries through just and equitable arrangements, *inter alia*, by the progressive elimination of such protective and other measures as constitute unfair competition.

498. In its resolution 3362 (S-VII) entitled "Development and international economic co-operation", the General Assembly asserted that the solution to world food problems lies primarily in rapidly increasing food production in the developing countries. To this end, urgent and necessary changes in the pattern of world food production should be introduced and trade policy measures should be implemented, in order to obtain a notable increase in agricultural production and the export earnings of developing countries. To achieve these objectives, it is essential that developed countries, and developing countries in a position to do so, should substantially increase the volume of assistance to developing countries for agriculture and food production, and that developed countries should effectively facilitate access to their markets for food and agricultural products of export interest to developing countries both in raw and processed form, and adopted adjustment measures, where necessary.

499. The solution to the food problem, which has taken on new proportions and become an acute issue in the world

¹⁵⁷ Report of the World Food Conference, Rome, 5-16 November 1974 (United Nations publication, Sales No. E.75.II.A.3), Chap. I.

today, particularly for the developing countries, is directly linked to the development of agriculture, in so far as agriculture itself is capable of fulfilling its functions within the complex pattern of each country's national economy. As part of the efforts to establish a new international economic order, special attention should therefore be given to solving urgently the world food crisis by expanding agricultural production throughout the world, particularly in the developing countries, by bringing into the agricultural sector areas at present uncultivated and raising the yield per hectare, through increased use of technological and chemical inputs and the introduction of the latest developments in agricultural science and technology.

500. Within the same context of development in food and agriculture, land reform questions are also a matter of major concern to the international community. In various resolutions, the General Assembly recognized that one of the major obstacles to economic, social and agricultural development in many developing countries was the persistence of outmoded land tenure systems and farming methods, that changes in the agrarian structure of the developing countries were intimately linked with their industrial development and that land reform was a matter for the sovereign rights of States. It declared that the United Nations should make a maximum concerted effort to facilitate land reform in an effective, democratic and peaceful manner in the developing countries and it encouraged the Member States concerned, as part of their economic and social development programmes, to introduce land reform and the other institutional reforms needed to improve their agrarian structure in the interests of landless cultivators and of small-scale and medium-scale farmers. It invited the Member States and all the international bodies concerned to strengthen their technical assistance to developing countries that were implementing land reform programmes and to give proper attention to requests for financial assistance or any other appropriate aid for agricultural development submitted by developing countries as part of their land reform programmes, and particularly by those countries which had already committed national resources, especially capital, to solving their own agrarian problems.

M. International trade as an instrument for development

501. International trade has undergone profound changes since the period before the establishment of the United Nations; it has become an essential instrument of economic development, because measures to stimulate an equitable expansion of international trade, as well as economic co-operation among States to eliminate any form of pressure and interference in the internal affairs of States, are prerequisites for development and the establishment of a new international economic order. These relations centre on the establishment of a just relationship between the prices of primary commodities and those of industrialized products and on price stability for all commodities on the basis of intergovernmental agreement. Countries possessing raw materials need to be paid prices corresponding both to the activity which has gone into exploiting those materials and to their real value. The prices must be such as to help these countries towards more rapid economic and social development. At the same time, industrialized products must be sold at prices which will not lead to the elimination of the

advantages obtained from the establishment of reasonable prices for raw materials but which, at the same time, will act as a stimulant for the continuous development of industrial activity. The establishment of fair price relationships is one way of ending the former relations of domination among States and peoples and of making international economic life more democratic.

502. From the first years of its activity, the United Nations has devoted itself to international trade problems and in particular, as a major concern, to trade in commodities. For instance, the General Assembly recognized the need to make continuous efforts to reduce or eliminate obstacles to world trade and to encourage its expansion as a help to the economic development of the developing countries. It also recognized that the establishment of just and equitable international commodity prices would contribute to the financing of economic development; it stressed that the expansion of international trade was essential to ensure full employment and an improvement in the standard of living of all countries and, in particular, the economic development of the developing countries. One of the most important problems in the economic development of the majority of the developing countries is the imbalance between the prices of the products they export and those of the goods and other equipment which they have to import; these terms of trade have continually deteriorated and have been a contributory factor to the growth, in these countries, of serious economic and social instability. Consequently, the General Assembly urged economically developed Member States to take due account, in the formulation and implementation of their trade and economic policies, of the interests of the developing countries, so as to facilitate the necessary expansion in the latter's trade. It was with that aim in view that the system of allowing preferential or duty-free entry for exports of developing countries into developed countries was established.

503. The most important present-day aspects of international trade are analysed in resolutions of the United Nations General Assembly concerning UNCTAD. In these resolutions, the General Assembly has pointed out that economic and social progress throughout the world depends in large measure on a steady expansion in international trade and that the extensive development of equitable and mutually advantageous international trade creates a good basis for the establishment of neighbourly relations between States, helps to strengthen peace and an atmosphere of mutual confidence and understanding among nations and promotes higher living standards, full employment and more rapid economic progress in all countries of the world; that the accelerated economic development of the developing countries depends largely on a substantial increase in their share in international trade; that the terms of trade continue to operate to the disadvantage of the developing countries, thus accentuating their unfavourable balance-of-payments position and reducing their capacity to import; that exports of a relatively limited range of primary commodities constitute a major source of foreign exchange for the developing countries and, consequently, are basic to their development; that serious problems both of a short-term and a long-term nature confront the developing countries as a result of the depression of, and fluctuations in, the price of primary commodities; that there is a need to eliminate obstacles, restrictions and discriminatory practices in world trade which, in particular, adversely affect the neces-

sary expansion and diversification of the exports of primary commodities and of semi-manufactured and manufactured goods by the developing countries; that it is important for all countries and all regional and sub-regional economic groupings to pursue trade policies designed to facilitate the necessary expansion of trade of developing countries and for them to encourage the indispensable growth of their economies; and that the promotion of higher rates of economic growth throughout the world and the evolution of a new and more appropriate pattern of international trade will require the adaptation of the institutional framework for international co-operation in the field of trade. In particular, the General Assembly has stressed that UNCTAD must play a major role in implementing the International Development Strategy and in reviewing progress in that respect.

504. In the Programme of Action on the Establishment of a New International Economic Order, resolution 3202 (S-VI) the General Assembly recommended that:

All efforts should be made:

(a) To take the following measures for the amelioration of terms of trade of developing countries and concrete steps to eliminate chronic trade deficits of developing countries:

- (i) Fulfilment of relevant commitments already undertaken in the United Nations Conference on Trade and Development and in the International Development Strategy for the Second United Nations Development Decade;
- (ii) Improved access to markets in developed countries through the progressive removal of tariff and non-tariff barriers and of restrictive business practices;
- (iii) Expeditious formulation of commodity agreements where appropriate, in order to regulate as necessary and to stabilize the world markets for raw materials and primary commodities;
- (iv) Preparation of an over-all integrated programme, setting out guidelines and taking into account the current work in this field, for a comprehensive range of commodities of export interest to developing countries;
- (v) Where products of developing countries compete with the domestic production in developed countries, each developed country should facilitate the expansion of imports from developing countries and provide a fair and reasonable opportunity to the developing countries to share in the growth of the market;
- (vi) When the importing developed countries derive receipts from customs duties, taxes and other protective measures applied to imports of these products, consideration should be given to the claim of the developing countries that these receipts should be reimbursed in full to the exporting developing countries or devoted to providing additional resources to meet their development needs;
- (vii) Developed countries should make appropriate adjustments in their economies so as to facilitate the expansion and diversification of imports from developing countries and thereby permit a rational, just and equitable international division of labour;
- (viii) Setting up general principles for pricing policy for exports of commodities of developing countries, with a view to rectifying and achieving satisfactory terms of trade for them;
- (ix) Until satisfactory terms of trade are achieved for all developing countries, consideration should be given to alternative means, including improved compensatory financing schemes for meeting the development needs of the developing countries concerned;
- (x) Implementation, improvement and enlargement of the generalized system of preferences for exports of agricultural primary commodities, manufactures and semi-manufactures from developing to developed countries and consideration of its extension to commodities, including those which are processed or semi-processed; developing countries which are or will be sharing their existing tariff advantages in some

developed countries as the result of the introduction and eventual enlargement of the generalized system of preferences should, as a matter of urgency, be granted new openings in the markets of other developed countries which should offer them export opportunities that at least compensate for the sharing of those advantages;

- (xi) The setting up of buffer stocks within the framework of commodity arrangements and their financing by international financial institutions, wherever necessary, by the developed countries and, when they are able to do so, by the developing countries, with the aim of favouring the producer developing and consumer developing countries and of contributing to the expansion of world trade as a whole;
- (xii) In cases where natural materials can satisfy the requirements of the market, new investment for the expansion of the capacity to produce synthetic materials and substitutes should not be made.

505. The promotion of wider trade relationships and of international economic co-operation on the basis of absolute fairness, legal equality and mutual advantage is a pressing need in the building of a new international economic order. It is becoming increasingly apparent nowadays that restrictive measures greatly hamper the free conduct of world trade and retard the development of international economic co-operation. Resolute action must therefore be taken, both through bilateral trade agreements and through multilateral trade negotiations and decisions in various international organizations and bodies for the promotion of free trade and unhampered co-operation among all States, to eliminate restrictions, artificial barriers and all tariff and non-tariff forms of discrimination. Trade and international economic co-operation must be based on foundations which exclude any pressure or interference by any country whatsoever in the internal affairs of others. All countries must take action to develop unhampered economic relations, so as to promote increased and improved exports from the developing countries and so as to contribute to the expansion of world trade and greater participation by each country in the benefits of the international division of labour.

N. Science and technology for development

506. Science and technology are indissolubly linked with development and the task of establishing a new international economic order, since they are real sources of civilization, power, well-being and progress. But States and peoples do not all possess these means to the same extent, and differences between countries in these fields are very great. The level of development of a country is largely determined by the extent to which it exploits its own natural resources through its industrial structures and scientific capacity, so it can easily be understood why unequal distribution of scientific strength goes hand in hand with economic inequality among countries. Today, the developed countries represent vast work-sites for processing raw materials obtained chiefly in developing countries. During the last 10 years, the developed countries have consumed 77 per cent, 81 per cent and 95 per cent of the world's reserves of coal, petroleum and natural gas respectively, although their populations represent less than a quarter of the world's population; in other words, 20 per cent of the world's population enjoys 80 per cent of world income and uses more than half the earth's resources. In the field of energy, an inhabitant of an industrialized country consumes 50 times more than an inhabitant of one of the world's poorest developing countries.

507. The disparity is enormous, not only in the use of resources but also in science, for 90 per cent of the world's scientific and technological research takes place in the developed countries. Seven industrialized countries alone, representing 20 per cent of world population, possess 92 per cent, 85 per cent and 83 per cent respectively of the world's proton accelerators, computers and nuclear power stations, the rest being owned by 109 developing countries. Towards the end of the last decade, *per capita* expenditure on scientific research in the developing countries was several hundred times less than in the developed countries. In those countries, 97 per cent of the population can read and write, whereas in the developing countries the figure is as low as 40 per cent.

508. If the economic division of labour is distorted in favour of the developed countries, the same situation exists as regards their share in the scientific field. Scientific personnel from developed countries prospect for the riches and natural resources of the less developed countries, but the information and data thus obtained are analysed in the scientific institutions of the developed countries, which draw the conclusions, elaborate the scientific theories and possess the means for their practical application, whereas scientific investigations of considerable value in developing countries cannot be put into practical application for lack of the necessary financial and economic means. This inequality is aggravated by the fact that developed countries obtain research information from developing countries for nothing, through the free exchange of scientific publications, whereas their own scientific discoveries which have practical applications are patented and sold as know-how. At the end of the last decade, payments made by developing countries for patents, licences, know-how, trade marks and consultancy services represented \$1.5 billion per annum; during the present decade they have increased. Mankind has benefited from knowledge and brilliant discoveries in theoretical mathematics and physics in countries which do not possess the means to apply them and are dependent for that on the developed countries, for example, in the matter of nuclear installations and technology. Latin America has provided world science with very important discoveries in medicine and biology, but has to buy its medical equipment in developed countries.

509. Not only is scientific knowledge circulated for the benefit of developed countries, which use it like a raw material, but so are the men who produce it. And thus we have the "brain drain": qualified staff leave poor countries to settle in rich ones, exceeding in numerical terms the consultant staff sent to developing countries under technical assistance programmes and exceeding in value the assistance granted to those countries. In 1967, for example, the developing countries received the services of 16,000 foreign consultants, but lost more than 40,000 specialists.

510. The imbalance is accentuated by the secrecy surrounding scientific discoveries and the obstacles placed in the way of access by developing countries to the achievements of modern science and technology.

511. From the first years of its existence, the United Nations concerned itself with assistance in the fields of technology and science and with the establishment of an expanded programme of technical assistance for the economic development of Developing countries, stressing the fundamental importance of such assistance for economic develop-

ment and effective international co-operation towards raising the living standards of the developing countries. A United Nations Capital Development Fund (resolution 2186 (XXI), of 13 December 1966), was established because the general problem of the economic development of the developing countries concerns the developed as well as the developing countries and is of the greatest importance for both, and because it is essential to use the machinery of the United Nations to provide financial assistance for accelerating the economic progress of the developing countries, in particular as regards their economic and social infrastructure, which is essential for any substantial increase in production and for expanding their economies. The General Assembly stressed in its resolutions that assistance should be of a kind and in a form consistent with the wishes of the recipients and should involve no unacceptable conditions for them, whether political, economic, military or other, and that assistance from the Fund should be provided in such forms and on such terms as are compatible with the continued economic development of the assisted countries.

512. In 1965, the Special Fund and the Expanded Programme of Technical Assistance were consolidated in the United Nations Development Programme (resolution 2029 (XX) of 22 December 1965). In 1966, the United Nations Capital Development Fund was established, along with regional and sub-regional consultancy services under the United Nations regular programme of technical co-operation. The General Assembly provided for institutional arrangements in the field of the transfer of technology whereby developed and developing countries could co-operate in the establishment, strengthening and development of the scientific and technological infrastructure of developing countries; it declared that developed countries should take appropriate measures, such as contributions to the establishment of an industrial technological information bank and consideration of the possibility of establishing regional and sectoral banks, in order to make available a greater flow to developing countries of information permitting the selection of technologies, in particular advanced technologies; and that consideration should also be given to the establishment of an international centre for the exchange of technological information for the sharing of research findings relevant to developing countries. The General Assembly on many occasions stressed the urgent need to take all possible measures to increase the real flow of capital and technical assistance towards the developing countries. It paid special attention to technical assistance in the field of public assistance. The adverse effect on developing countries of the drain of qualified personnel was also stressed in resolutions of special sessions of the General Assembly, in which the Assembly noted with concern that highly qualified professional staff were continuing to emigrate from developing to developed countries in ever-increasing numbers, a phenomenon which in some cases might retard the economic and social development of the developing countries; it considered that, among the main causes of this "brain drain", account should be taken of the technological and economic gap between the developing and developed countries. Another aspect of the same question which is of concern to the General Assembly is the role of the United Nations in training national technical personnel with a view to accelerating the industrialization of the developing countries; the establishment of the United Nations Institute for Training and Research is connected with this.

513. Special resolutions of the General Assembly emphasize the important role of transfer to the developing countries of technology, including scientific and practical know-how and patents. In these resolutions, the General Assembly recognizes the special usefulness of fostering reciprocal exchanges of scientific and technological information for economic development and the importance of constantly raising productivity and standards of living throughout the world, particularly in the developing countries, which badly need assistance of this kind and access to the know-how and experience in applied science and technology that is so essential for accelerating their development. The General Assembly also stresses in its special resolutions the importance of international co-operation in data processing for development and the role of transfer to the developing countries of technology, including scientific and practical know-how and patents. The United Nations gives special attention to scientific and technical co-operation between developing countries, as evidenced by resolution 3405 (XXX), of 28 November 1975 entitled "New dimensions in technical co-operation" adopted by the General Assembly at its thirtieth session. In the annex to that resolution the General Assembly laid down the following guidelines for the future orientation of the United Nations Development Programme:

- (i) The basic purpose of technical co-operation should be the promotion of self-reliance in developing countries by building up, *inter alia*, their productive capability and their indigenous resources and by increasing the availability of the managerial, technical, administrative and research capabilities required in the development process;
- (ii) The selection of priority areas in which to seek the assistance of the United Nations Development Programme should remain the exclusive responsibility of the Governments of the recipient countries; in that context, the Programme should respond favourably to requests for meeting the most urgent and critical needs of each developing country, taking into account the importance of reaching the poorest and most vulnerable sections of their societies and enhancing the quality of their life;
- (iii) Technical co-operation should be seen in terms of output or the results to be achieved, rather than in terms of input;
- (iv) So long as projects are for the basic purpose of technical co-operation, the United Nations Development Programme should provide, where appropriate, equipment and material resources, adopt a more liberal policy towards local cost financing and be flexible in requirements for counterpart personnel;
- (v) The United Nations Development Programme should diversify the sources of its supply from countries to enable it to mobilize in a prompt and efficient manner all available human and material resources for technical co-operation, including particularly those from developing countries;
- (vi) The United Nations Development Programme should give increased support to programmes of technical co-operation among developing countries and should procure as much equipment and as many services as possible on a preferential basis, in accordance with United Nations practice, from local sources or from other developing countries;
- (vii) Governments and institutions in recipient countries should be increasingly entrusted with the responsibility for executing projects assisted by the United Nations Development Programme;
- (viii) Technical co-operation should be provided at any of the levels and stages of the development process, including assistance for project planning, pre-feasibility, feasibility, detailed engineering design and, where appropriate, construction and initial operations and management;
- (ix) In accordance with the consensus, the United Nations Development Programme should more often enter into partnership with capital assistance sources, in the terms

expressed in paragraph 53 of the report of the Administrator on new dimensions in technical co-operation, with a view to financing the technical assistance components of projects and programmes, taking into account the close relationship between technical co-operation and capital formation;

- (x) In the context of new dimensions of technical co-operation, special attention should be paid to the requirements of the least developed among the developing countries.

514. The Declaration on the Establishment of a New International Economic Order established the principle of giving the developing countries access to the achievements of modern science and technology, promoting the transfer of technology and creating indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies. In resolution 3362 (S-VII), of 16 September 1975, entitled "Development and international economic co-operation" adopted by the General Assembly at its seventh special session, one section is devoted to the utilization of science and technology as a lever for accelerating development by, among other measures, the creation of an industrial technological information bank and consideration of the possibility of regional and sectoral banks in order to enable the developing countries to select appropriate modern technologies. The priority areas include that of informatics. Consideration is also given to the establishment of an international centre for the exchange of technological information and to the possibility of creating an energy institute. The transfer of technology is to be the subject of an international code of conduct containing provisions on patents and trade marks. The resolution refers to ways of simplifying the industrial property market to facilitate the technological choices of developing countries. A United Nations conference on science and technology for development is to be held for strengthening the technological capacity of those countries, adopting effective means for the utilization of scientific and technological potentialities in the solution of development problems of regional and global significance, and providing instruments of co-operation to developing countries for solving socio-economic problems. With a view to taking effective measures at the international and national levels, UNCTAD has undertaken an analysis of the transfer of technology, the agreements and terms which govern it and the restrictions on it that have to be overcome.

515. Another important problem is that of overcoming certain psychological and social barriers; for centuries, the developing countries have regarded science and technology as instruments of domination destructive to their own cultures and traditional technologies. Hence, the concern to import foreign technology without also importing a foreign civilization capable of destroying the national character, and the desire to choose and develop those technologies which are best suited to specific national characteristics and are capable of employing local labour and meeting the needs peculiar to each people and their civilization. The developing countries do not see access to science and technology as something to be grafted on to their culture from outside, but as an expression of their own efforts to adapt science and technology to their national character and to create specific scientific and technological structures of their own. The transfer of scientific and technological know-how must take place in a climate of collaboration among nations based on respect for the cultures and independence of decision of the developing countries in the establishment of their own development objectives and strategies according to their own needs and national peculiarities.

516. The Programme of Action on the Establishment of a New International Economic Order states that all efforts should be made to formulate an international code of conduct for the transfer of technology corresponding to needs and conditions prevalent in developing countries so as to give them access on improved terms to modern technology adapted to the local situation and to "expand significantly the assistance from developed to developing countries in research and development programmes and in the creation of suitable indigenous technology". The Programme of Action adds that commercial practices governing the transfer of technology should be adapted to the requirements of the developing countries. The Lima Declaration and Plan of Action on Industrial Development and Co-operation¹⁵⁸ suggest the creation of an industrial and technological information bank to help the developing countries to select suitable advanced technologies.

517. Another problem related to the question of the application of science and technology to development is that of the transnational corporations, which control a large share of the world's scientific and technological capacity. The controversial question of control over the activities of these corporations is therefore of relevance here. The fundamental principle set out in the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX), of 12 December 1974) is that "every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities". The Programme of Action on the Establishment of a New International Economic Order provides that all efforts should be made to formulate an international code of conduct for transnational corporations. The new Commission on Transnational Corporations established by the Economic and Social Council has already decided to give priority to the preparation of such a code. According to the Programme of Action on the Establishment of a New International Economic Order, the purpose of this code should be: (a) To prevent interference in the internal affairs of the countries where they operate and their collaboration with racist régimes and colonial administrations; (b) To regulate their activities in host countries, to eliminate restrictive business practices and within the context of national objectives facilitate, as necessary, the review and revision of previously concluded arrangements; (c) to bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms; (d) to regulate the repatriation of the profits accruing from their operations, taking into account the legitimate interests of all parties concerned; (e) to promote reinvestment of their profits in developing countries.

518. Transfers of technology cover a broad spectrum ranging from fixed assets such as machinery and equipment to the services of qualified technicians or the transfer of invisibles such as patents and licences. According to the *World Economic Survey, 1974*, the search for appropriate technology does not necessarily entail the revival of older methods and procedures once practised in the more advanced countries. The only satisfactory long-term answer lies in the development of the technical capacity of the developing countries themselves; "only this will lessen their dependence on the services of the consulting engineers of the more advanced countries and the importation of off-the-shelf

equipment designed for very different circumstances".¹⁵⁹ Modern technology can undoubtedly help any country but it should not produce harmful side-effects. The replacement of natural products such as fibres and rubber by synthetics such as plastics and composites is reducing the already limited markets of the developing countries. Moreover, synthetics and their processing may have a negative impact on the environment. The Programme of Action on the Establishment of a New International Economic Order therefore calls for measures "to expand the markets for natural products in relation to synthetics, taking into account the interests of the developing countries, and to utilize fully the ecological advantages of these products".

519. Science is an important force for transforming society, enhancing human ability to tame nature and satisfying society's growing material and spiritual needs so as to offer mankind a decent and dignified life. The present age is dominated by the most profound technological and scientific revolution ever witnessed in world history, one which marks a great leap forward in all fields, in the development of productive forces and the growth of man's creative abilities. The tremendous force of modern science and technology in the process of headlong renewal are important factors of direct action in the lives of the peoples on whom political, economic and social change depend. In these circumstances, free access to modern science and technology is one of the fundamental rights of all peoples. That right is not only morally and legally justifiable but is also based on the ability of each country to advance science and technology and develop its own creative genius, for history shows that all peoples, large and small alike, can make their own contribution to the development of the heritage of universal science. Scientific research is one of the main fields in which the genius of each people, its thought and creative capacity, manifest themselves. Mankind is indebted to various small countries which, thanks to the ingenuity of their popular creativeness or intellectual talent, have in the course of history made contributions that have gained universal currency.

520. The need for the accelerated development and mobilization of all resources to achieve fast rates of development and create local production capacities converts science into an important production factor; the practical application of scientific results has produced a substantial growth in society's wealth and an unprecedented increase in people's creative potential. Science and production are two inseparable aspects of mankind's creative capacity. They are more effective and have a greater impact on a country's life and economy if they are linked with education and training. Seen from that angle, any new approach must be based on the organic unity of education, research and production, since the teaching of productive work and education for development are sure means of progress for the developing countries.

521. Science and technology are universal from the point of view of the validity of their terms, their truth and their capacity to promote change and develop resources, but each people treats them according to its own institutions and on the basis of its own economy, culture and scale of values. Modern science and technology do not exclude respect for

¹⁵⁸ See foot-note 139 above.

¹⁵⁹ *World Economic Survey, 1974, Part One. Mid-term Review and Appraisal of Progress in the Implementation of the International Development Strategy* (United Nations publication, Sales No. E.75.II.C.1), p. 20.

traditional cultural values, nor can they nullify folk art and popular crafts. The universality of these fields and the requirements of the modern world — which can solve its problems only by broad co-operation — establish as one of the objectives of the new international economic order the removal of obstacles to the circulation of scientific ideas and discoveries and their development in a new age of fruitful contact based on mutual respect. One objective necessity of the present day is to develop a wide exchange of experience and opinion among creative people in all countries of the world, to get to know the achievements of other peoples and for each nation to work actively for the general advancement of science and contemporary culture.

522. The economic development of all countries is a fundamental requirement of the new international economic order and demands broad access for all States, without discrimination or barriers, to the achievements of contemporary science and technology. The chance to take advantage of the achievements of science and technology is a prerequisite for the multilateral advancement of each developing country, for the development of the resources of all countries and for the attainment of effective and mutually advantageous international trade. To facilitate the access of all States to the achievements of science and technology, specific measures must be taken to bring about a broad transfer of modern technology and provide technical assistance in all areas of development. Special attention must be paid to the promotion and encouragement of scientific research in all the developing countries. The United Nations Conference on Science and Technology for Development may make a major contribution to the achievement of these objectives.

523. Training the local experts necessary for economic and social development is of decisive importance for overcoming under-development. The development of education at all levels, the democratization of official schooling and the assimilation of science and modern culture by the younger generation are all essential components of the advancement of each country and of mankind as a whole. Each country and the international community must devote the utmost attention and greater effort to extending education at all levels, to organizing it on a scientific basis and to linking it more and more closely with the practice and real needs of development.

O. Development financing

524. Questions relating to economic development financing are of immediate and vital interest for closing the huge gap that separates the developed and the developing countries. The fact that the world still exhibits the degrading spectacle of extreme wealth amidst the poverty and suffering of many different peoples is an affront to reason, to world social justice and to the aspirations of all peoples for a decent, better, more equitable and more civilized life. The perpetuation of the traditional system of economic and financial relations between States and of the old international division of labour not only represents the last traces of the domination exerted by a privileged part of the world over the resources and factors of production of the disinherited and deprived, but also aggravates the imbalances at present characteristic of the world's economy. Owing to the increasing interdependence of States and peoples throughout the world, the persistence and intensification of these eco-

nomie disparities have adverse effects on the whole international community and on all peoples, and are also a source of new general imbalances which threaten world peace and security. Yet finding a satisfactory solution to the problem of development would have an encouraging effect not only on the less developed countries but also on the equilibrium and progress of society as a whole. Solutions to this problem of development, particularly in the developing countries, must be sought in means of financing.

525. The financing of the economic development of developing countries has been a major issue in United Nations debates since the early years of the Organization. The General Assembly recognized that more rapid economic development of developing countries, and in particular an increase in their production, is essential for raising the level of productive employment and the living standards of their populations, for the growth of the world economy as a whole and for the maintenance of international peace and security; and that, although the economic development of developing countries depends primarily upon the efforts of the people of those countries, the necessary acceleration of that development, on the basis of their own plans and programmes, requires not only technical but also financial assistance from abroad, particularly from the more developed countries. The General Assembly consequently set up a special fund to provide systematic and continuing assistance in fields essential for the integrated technical, economic and social progress of the developing countries.

526. In its resolution 2626 (XXV), of 24 October 1970, entitled "International Development Strategy for the Second United Nations Development Decade", the General Assembly stated the following:

Developing countries must, and do, bear the main responsibility for financing their development. They will, therefore, continue to adopt vigorous measures for a fuller mobilization of the whole range of their domestic financial resources and for ensuring the most effective use of available resources, both internal and external;

[...]

each economically advanced country should endeavour to provide by 1972 annually to developing countries financial resource transfers of a minimum net amount of 1 per cent of its gross national product at market prices in terms of actual disbursements, having regard to the special situation of those countries which are net importers of capital.

527. General Assembly resolution 3362 (S-VII) of 16 September 1975, recognized the need for substantially increasing the financial resources made available to developing countries on concessional terms, in other words, it expresses a definite preference for the provision of assistance through governmental channels and international financing institutions, for official aid in general and for preferential arrangements, other than the provision of private capital, bilateral arrangements and hard loans.

528. Disarmament should release considerable resources for development financing. In the Declaration on the conversion to peaceful needs of the resources released by disarmament, resolution 1837 (XVIII), of 18 December 1962, the General Assembly noted that the arms race was continuing all over the world, that military expenditures of States were enormous, that conventional, nuclear and other weapons of mass destruction were accumulating and being developed, and that, as a result, an agreement on general and complete disarmament under effective international control was urgent. The General Assembly recognized that all problems of transition connected with disarmament could be met by

appropriate national and international measures, that diversion to peaceful uses of the resources now employed for military purposes could be accomplished in a manner which would benefit all countries and would lead to the improvement of economic and social conditions throughout the world, and that disarmament could be accomplished in all countries not only without impairing their economies but with great advantages to the real welfare of their people. It believed that the release of a portion of the savings which would follow upon an agreement on disarmament for aid to the economic growth of the less developed countries, together with their own intensified internal efforts and domestic savings, would enable countless millions of people in the less developed countries to improve substantially within a generation their present level of living through, *inter alia*, the development of new centres of energy and industrial activity; and it expressed its conviction that disarmament and the conversion of huge resources to peaceful uses would open up vast opportunities for the development of peaceful co-operation and trade among States on the basis of equality and mutual benefit, and that the expansion of international economic exchanges and mutual assistance would be beneficial to all countries, both big and small and both economically less developed and highly developed, and would ensure the growth of production and provide new jobs for millions of people. The General Assembly solemnly urged the Governments of all States to multiply their efforts for a prompt achievement of general and complete disarmament under effective international control and declared that it firmly believed in the triumph of the principles of reason and justice, in the establishment of such conditions in the world as would forever banish wars from the life of human society, and replace the arms race, which consumes enormous resources, by broad and fruitful co-operation among nations in bettering life on earth.

529. A highly topical question now of concern to the United Nations is international monetary reform. In this connexion, in its resolution 2806 (XXVI), of 14 December 1971, the General Assembly resolved that an important guideline which should be taken into account in the form of the international monetary order was the full participation of all interested countries in the process of decision-making with a view to achieving a steady, uninterrupted expansion of commercial and financial flows, especially those of the developing countries. In the Programme of Action on the Establishment of a New International Economic Order, the General Assembly advocated, with respect to the international monetary system and financing of the development of developing countries, that:

All efforts should be made to reform the international monetary system with, *inter alia*, the following objectives:

(a) Measures to check the inflation already experienced by the developed countries, to prevent it from being transferred to developing countries and to study and devise possible arrangements within the International Monetary Fund to mitigate the effects of inflation in developed countries on the economies of developing countries;

(b) Measures to eliminate the instability of the international monetary system, in particular the uncertainty of the exchange rates, especially as it affects adversely the trade in commodities;

(c) Maintenance of the real value of the currency reserves of the developing countries by preventing their erosion from inflation and exchange rate depreciation of reserve currencies;

(d) Full and effective participation of developing countries in all phases of decision-making for the formulation of an equitable and durable monetary system and adequate participation of developing countries in all bodies entrusted with this reform and, particularly,

in the proposed Council of Governors of the International Monetary Fund.

530. A new economic order and international policy calls for a new monetary and financial order determined by its economic basis. It is evident from the present situation, in which the economic crisis is accompanied by a monetary crisis, that economic and monetary phenomena are interdependent; one of the essential constituents of a new international economic order must therefore be a new monetary and financial order. The need for the new international economic and political order to be comprehensive in conception means that it must include a monetary and financial order. The most competent bodies for examining and solving the many problems posed by a new order of this kind would be the United Nations and its specialized agencies.

P. Economic development and economic rights

531. There is a relationship of interdependence and mutual conditioning between the right of peoples to choose their own economic system and pursue their economic development and the economic rights established in the International Covenant on Economic, Social and Cultural Rights.

532. The recognition of the equality of peoples' rights, including their right to economic self-determination, in other words, their right to choose their economic system and pursue their economic development, offers a firm foundation for the promotion of human rights in the economic, social and cultural fields. Not until genuine political independence has been achieved and people and States can exercise permanent sovereignty over their natural wealth and resources will it be possible to guarantee and promote human rights in economic, social and cultural matters. In order to ensure that fundamental human rights are guaranteed and promoted in practice, it is imperative to establish a new international economic order on the basis of sovereign equality, equity and respect for the rights of all peoples, so that every people and every State may enjoy integrated economic, social and cultural development in accordance with its aspirations for progress and well-being.

533. The promotion of human rights in the economic, social and cultural spheres also helps to foster the general development of peoples.

534. In the preamble to the International Covenant on Economic, Social and Cultural Rights, the States parties to the Covenant recognize that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

535. In the Covenant (article 2), each State party pledges itself to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

536. The States parties undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status.

537. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals.

538. With regard to the nature of the economic, social and cultural rights and the relationship between their enjoyment and the economic and social situation of the countries concerned, it would be unrealistic to expect each of the States parties to the Covenant to do more than undertake "to take steps [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the [...] Covenant". It is evident that certain economic, social and cultural rights cannot be achieved other than progressively, since a country cannot progress any faster than its resources permit.

539. The States parties to the Covenant undertake (article 3) to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.

540. The States parties to the Covenant recognize (article 4), that in the enjoyment of those rights provided by the State in conformity with the Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

541. Nothing in the Covenant (article 5, para. 1) may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized therein, or at their limitation to a greater extent than is provided for in the Covenant.

542. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted (article 5, para. 2) on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

543. The States parties further recognize in the Covenant (article 6) "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts", and they agree to take appropriate steps to safeguard that right, including technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. This provision not only protects people against the introduction of forced labour but is also a

guarantee by the contracting States of people's right to work, thereby ensuring that the necessary conditions are created to preclude all risk of death from hunger or weakness.

544. The States parties further recognize (article 7) the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

This article expresses concern to establish the principle of equal remuneration for male and female workers who are doing the same work.

545. The States parties recognize (article 8) the right to form trade unions.

546. The States parties recognize (article 11) the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. They pledge themselves to take appropriate steps to ensure the realization of this right and recognize to that effect "the essential importance of international co-operation based on free consent". Furthermore, in recognizing "the fundamental right of everyone to be free from hunger", they agree to take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

547. The realization of economic rights is a question of cardinal importance and has been examined in a masterly fashion in the study¹⁶⁰ of Mr. M. Ganji, special Rapporteur of the Commission on Human Rights. It has complex effects on the realization of civil and political rights and on the different aspects of the development of all peoples.

¹⁶⁰ *The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress* (United Nations publication, Sales No. E.75.XIV.2).

Chapter VI

THE RIGHT OF PEOPLES FREELY TO PURSUE THEIR SOCIAL DEVELOPMENT

A. General considerations

548. All peoples, by reason of their right to self-determination, have the right to determine freely their social development, which is playing an increasingly important role in speeding up the progress of every nation. The great importance of social development for all peoples was fully brought out for the first time during the debate concerning the adoption of the Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV), of 11 December 1969), a document which, in view of the influence it is bound to have on social progress and development, is often compared to the Universal Declaration of Human Rights. Social progress and a just social order are essential conditions for the full satisfaction of man's aspirations and for the safeguarding of international peace and security. The first and foremost requirement for development and social progress is the elimination from society of all the evils and obstacles that run counter to it, such as inequality, exploitation, war, colonialism and racism.

549. The social problems in the world are very acute, very urgent and of vast dimensions. Many of them have been considered by the General Assembly and other organs of the United Nations; they include integrated economic and social development; balanced and integrated economic and social progress; the interdependence of the economic and social elements of development; the eradication of illiteracy in the world; the struggle against racial prejudice, national and religious intolerance, *apartheid* and Nazism; the abolition of slavery; the struggle against crime; the struggle against the exploitation of labour through illicit and clandestine traffic; the utilization of the progress in science and technology for the benefit of peace and social development; the achievement of far-reaching social and economic changes for the purpose of progress; protection against torture and other cruel, inhuman or degrading treatment or punishment; demographic growth; questions concerning the preservation and protection of the human environment; housing questions; assistance in cases of natural disaster; the rights of women and their participation in social and economic development; the rights of the child; protection of the aged and the handicapped; freedom of information; assistance to refugees and stateless persons; the promotion and protection of human rights and fundamental freedoms.

550. A remarkable development at the present time is the increasing awareness on the part of the international community of the principles and objectives of social progress and development and of the ways and means of achieving it, and this has given rise to the notion of integrated economic and social development. Certain principles concerning human rights in the social field had already been

proclaimed in the Universal Declaration of Human Rights and the provisions of that instrument had been further developed in more detailed declarations adopted subsequently, such as for instance the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV), of 20 November 1959). They had also been given legal expression in the International Covenant on Economic, Social and Cultural Rights, which defines not only social rights but also social duties and prescribes certain ways of obtaining respect for them. The need for joint and concerted action in all branches of economic and social life was given comprehensive expression for the first time in the International Development Strategy for the Second United Nations Development Decade (General Assembly resolution 2626 (XXV), of 24 October 1970).

551. The interdependence of economic and social development is of vital importance in the wider process of growth and change and for the strategy of integrated development which takes full account, at all stages, of its social aspects. The policy-making bodies of the United Nations system have, in the past, considered issues of social development and social aspects of economic development in various contexts as more or less separate though interdependent questions. Now, the interdependence of economic and social development in the contemporary world will be given a prominent place. Social development has a very complex nature and is indissolubly linked to economic development, since they are both components of the same process in which social development gives meaning to economic development and the latter makes the former possible. History has shown that the determining role in that single process was played by economic development, which, in turn, was stimulated or retarded by trends in social development. The interaction of both factors must be borne in mind in any steps designed to improve the social situation. It is very important to enunciate the principles and goals of social development both as a separate aspect of development and as a means of accelerating economic progress.

552. The importance of economic development as the material base of social development must not be overlooked. In this connexion, it should be borne in mind that, up to a determined level of development, priority should be given to economic development. The experience of the developing countries has shown that, up to a certain level of development, economic considerations are of greater importance than the social ones, but that some social elements are given priority even in the case of the least developed countries, since it has been noted that to neglect these factors would amount to impeding the acceleration of development — in the first place, of education, health, ownership of land and social relations resulting therefrom. There cannot be any social development without economic growth. The

developing countries are too poor to embark on massive social welfare programmes without dissipating scarce resources, and under existing conditions such programmes will only result in distributing poverty.

553. It is also true, however, that in the process of rapid economic development neglect of social welfare would have moral as well as economic consequences, and it is therefore necessary to achieve a balance between economic growth and social development. Economic development is only a means of achieving certain social objectives and economic growth and social development are interdependent. The benefits of economic advancement should serve not merely an already privileged few but the many who are in dire want. Because of its humanitarian aspects, social development is far more general in scope and is aimed at creating optimum conditions of well-being for all mankind. As an example of what is said above can be quoted the situation in many countries where increased urbanization and technological improvements have resulted in an increase in the national product, and the standard of living has risen considerably. However, this rapid economic development has had serious side-effects: urbanization has created problems in housing, environmental hygiene and traffic control. On the other hand, the need to take into account the role of social development in accelerating economic and social progress must be emphasized. There is an increasing understanding of the interdependence of economic and social development in the process of growth and change, in the sense that social development is now recognized to be not only an ultimate goal in itself, but also an essential input factor in the process of economic development.

554. Nevertheless, it must not be forgotten that the causes of imbalance between economic development and social progress vary from country to country, depending on each country's social and economic situation. For some, the cause might be overpopulation; for others, the inadequacy of the national income. Despite the efforts of many countries, the progress made in social development is far from satisfactory, because of the lack of co-ordination between technical assistance projects in the social field and the priority needs of the developing countries.

555. The interdependence of economic and social development is very important from the point of view of understanding the role of the implementation of the right of peoples to self-determination in the political, economic and social development of nations. A very clear example of this is the social situation in developing countries. Their contemporary social problems are the result of the totally unsatisfactory economic situation and of the constantly increasing inequality between the developed and the developing countries, which is in its turn the heritage of their colonial past. This inequality between developed and developing countries with respect to social conditions must be abolished, and special attention must be given to the problems of social progress in developing countries. National independence, based on the right of peoples to self-determination and on the principle of non-interference in internal affairs, constitutes a basic precondition for social as well as economic and cultural progress. This national independence is used by newer States in the solution of many problems, some of which create obstacles to genuine social progress. Social development requires the immediate and final elimination of all forms of inequality, exploitation, colonialism and racism and all other policies opposed to the principles

and purposes of the Charter of the United Nations. In the colonized countries, under-development has been the result of moral and physical degradation, humiliation and hopelessness, and the hatred, racism and that has been practised against them. Generally speaking, it has been the result of oppression. The fact is that colonialism, discrimination, *apartheid*, exploitation, war, aggression, inequality and injustice still exist. Aggression, occupation, colonialism and other evils force peoples to devote their resources to self-defence and thus contribute an obstacle to economic and social development. There are many other problems deriving from the colonial past of the developing countries which must be solved, for example the problem of the "brain drain". The solution of these problems will contribute to social progress. This state of affairs, as far as the social and economic situation in the developing countries is concerned, has been the result of the denial to them of their right to self-determination.

556. In exercising its right to self-determination, each State and, as far as they are concerned, each nation and people, has the right to determine freely its own objectives of social development, to set its own priorities, and to decide the means and methods of their achievement without any external interference. The developing countries are building up their economy and improving the social situation of their population. In this context, the following important problems can be mentioned: the complete interdependence of economic and social development; the need for States to plan social development; the need to establish priorities and classify requirements; the need for a closer relationship between human rights and social development; the need to envisage social development in the context not only of science and technology, but also of civilization, culture, traditions and the highest spiritual and moral values; in the field of international co-operation the need for efforts and sacrifices on the part of individuals and States, and the need to release additional resources through a just policy with regard to commodities and through disarmament; and the need for technical assistance. The objectives of social development are well known, and, in order to achieve them, State action must take the form of planning in the social field, carefully integrated in the country's overall economic development, with a view to avoiding any imbalance between the pace of economic development and that of social development. Similarly, a balance between urban and rural development must be ensured, since unless social development in those two sectors proceeded at the same pace irreparable harm would be done to economic progress. Moreover, it must be borne in mind that all social development would necessarily be jeopardized unless proper measures for family planning were adopted. Lastly, there must also be emphasis on other methods and means, such as the training and improvement of senior staff, full education and the consistency of social methods.

557. If the world community is to adopt a realistic attitude, it must recognize the close relationship between social well-being and the maintenance of peace, the elimination of colonialism, the need for full independence and self-government for all peoples, and the principle of non-interference in the internal affairs of others. National and international political factors exert a powerful influence on the economic and social development of nations. Far-reaching social and economic reforms and the intensive participation of the people in efforts designed to achieve social progress are

essential prerequisites for equitable social development. The maintenance of international peace and security—based on relations and co-operation among States, both large and small, with differing political systems and on respect for self-determination, sovereignty and independence—likewise create a favourable climate for social development. On the other hand, aggressive policies and disregard for the principles and rules of international law have serious adverse consequences, such as the need to squander material and intellectual resources on the sterile production of armaments. Armaments and the policy of *apartheid* are forcing the small countries to strengthen their defensive capacity. If the more prosperous countries devote a small percentage of their arms budget to assistance to the developing countries, in a spirit of humanitarian co-operation and with no political strings attached, social development will be an easier task. Moreover, one half of the vast sums of money being spent on armaments by the developed countries would relieve all the misery borne for so long by the inhabitants of the poor nations. Thus, primary emphasis should be laid on the fact that the maintenance of peace and security is a prerequisite for economic and social development, because social progress and peace are inseparably linked. Peaceful coexistence and co-operation among States irrespective of differences in their social system constitute the indispensable prerequisite for social progress in the world as a whole. When economic development and social progress are ensured, they have a positive influence on the international situation and co-operation, so that economic development and social progress should be the common concern of the whole international community and should, by increasing economic prosperity and well-being, help to strengthen peaceful relations and co-operation among nations.

B. Principles and objectives of social development

558. The first basic principle of progress and development in the social field laid down in the Declaration on Social Progress and Development, article I, is that

All peoples and all human beings, without distinction as to race, colour, sex, language, religion, nationality, ethnic origin, family or social status, or political or other conviction, shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should, on their part, contribute to it.

This provision is of great importance, for it is impossible to refer to development without recognizing first of all that it is human beings who provide the dynamic force in this process. The movement of this collective machinery depends upon the extent of co-operation of each of its members. It is therefore clear that it rests with society to provide the means whereby man may attain his full potential and play an active part in the life of the nation. The aspirations of the masses must be heeded and satisfied, and those aspirations should be at the centre of all social activities. In that way, levels of living will be constantly raised and every individual will have greater opportunities to develop his abilities to the maximum and thus make his personal contribution to the building of society, receiving in exchange all the advantages that society can offer him. Society is composed of individuals and its progress demands the co-operation of all its members. It is necessary to encourage man to contribute to social development by his own efforts and, conversely, the progress made by the community should

benefit the individual. For that reason, social development should be based on social justice. There is no doubt whatever that, provided economic and technical progress serves man without reducing him to slavery, it is indispensable, for the sole objective of development is to benefit human beings.

559. The second general principle embodied in article 2 of the Declaration is that:

Social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice, which requires:

(a) The immediate and final elimination of all forms of inequality, exploitation of peoples and individuals, colonialism and racism, including nazism and *apartheid*, and all other policies and ideologies opposed to the purposes and principles of the United Nations;

(b) The recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination

In these provisions, the belief is clearly expressed that the promotion of the social progress of all mankind towards overcoming all obstacles to its realization, the primary task of all States and international organizations is to eliminate from the life of society all evils and obstacles to social progress, particularly such evils as inequality, exploitation, war, colonialism, and racism, and to ensure the recognition and effective implementation of human rights.

560. Very important primary conditions for social progress and development are formulated in article 3 of the Declaration. They are:

(a) National independence based on the right of peoples to self-determination;

(b) The principle of non-interference in the internal affairs of States;

(c) Respect for the sovereignty and territorial integrity of States;

(d) Permanent sovereignty of each nation over its natural wealth and resources;

(e) The right and responsibility of each State and, as far as they are concerned, each nation and people to determine freely its own objectives of social development, to set its own priorities and to decide in conformity with the principles of the Charter of the United Nations the means and methods of their achievement without any external interference;

(f) Peaceful coexistence, peace, friendly relations and co-operation among States irrespective of differences in their social, economic or political systems.

It was generally felt that social development depends on certain basic conditions, the first being that a country should be the master of its own destiny. Consequently, that condition had to be clearly and explicitly recognized among the general principles guiding development. Although many principles are fundamental to development, not all of them can, to the same extent, guarantee social progress. From this point of view, national independence, based on the right of peoples to self-determination, the principle of non-interference in the internal affairs of States must be singled out as those providing a basis for genuine social progress in the era of decolonization. These principles, embodied in the Charter of the United Nations, enable the nation concerned to achieve social and cultural progress and economic development, and strict compliance with them will give real meaning to political, economic and social development and enable Governments to implement their programmes in all spheres. Conversely, the violation of any one of them will

adversely affect its economic, social and other policies, as well as the ability of the States to achieve national objectives. With regard to the principle of non-intervention in the internal affairs of States, it is only if a State is protected from external pressure that it can determine freely its own methods for implementing its national programmes and establishing priorities. That principle is therefore relevant to, and indeed should be the basis for, national independence, if this is to be a means of achieving social progress. The importance of the principle of respect for the sovereignty and territorial integrity of States is very clear. No one can seriously maintain that a country whose sovereignty and territorial integrity are threatened, or which is under foreign occupation or subject to external pressure, can devote all its human and material resources to economic advancement or implement its own programmes. Sufficient emphasis has to be laid on the principle of sovereign equality of States, which developing countries sometimes feel must be clearly defined in order to protect them from the covetousness of great Powers; some flagrant examples of which are to be seen in the contemporary world. Independence, national sovereignty and territorial integrity are the three pillars on which all economic, social and cultural progress rest.

561. In article 4, the Declaration states the fundamental principle that

The family as a basic unit of society and the natural environment for the growth and well-being of all its members, particularly children and youth, should be assisted and protected so that it may fully assume its responsibilities within the community. Parents have the exclusive right to determine freely and responsibly the number and spacing of their children.

562. In article 5, the Declaration provides that:

Social progress and development require the full utilization of human resources, including, in particular:

(a) The encouragement of creative initiative under conditions of enlightened public opinion;

(b) The dissemination of national and international information for the purpose of making individuals aware of changes occurring in society as a whole;

(c) The active participation of all elements of society, individually or through associations, in defining and in achieving the common goals of development with full respect for the fundamental freedoms embodied in the Universal Declaration of Human Rights;

(d) The assurance to disadvantaged or marginal sectors of the population of equal opportunities for social and economic advancement in order to achieve an effectively integrated society.

It must be emphasized that this article lays the foundation for the great acts of social reform, such as the improvement of education as a basic factor in social development and as an instrument for the transformation of society, the training of supervisory personnel for the civil service to guide the community towards modernization, free medical assistance and health education, the implementation of adult literacy campaigns, the improvement of labour conditions and vocational guidance, the provision of family allowances and the construction of housing and public services. Many other reforms and improvements can also have very essential general effects, such as assurance of the right to work through the promotion of full employment in urban and rural areas; free choice of employment; just and favourable conditions of work, including the right to rest and leisure; the reasonable limitation of working hours, weekly rest days and annual holidays with pay; the establishment of a compulsory minimum wage and of equal pay for work of equal

value, irrespective of sex, age or race; the improvement of industrial health and industrial safety conditions for workers, by means of appropriate legislative measures. Social development requires the assurance to everyone of the right to work and the free choice of employment. Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of human beings, ensure equal rights to property for all and create conditions leading to genuine equality among people. The exercise of the right to self-determination can in many countries make possible the land and agrarian reform based on the principle that the land belongs to those who work it and of which the final touchstone is the economic and social welfare of the tiller of the land. Such economic development implies not only sustained progress in a nation's total and *per capita* product but also equity in the distribution of farm income, increased use and efficiency of resources, and progress in improving resource productivity. But as the development process is indivisible, the welfare of the small peasant is possible only through co-ordination between land and agrarian reform on the one hand and rural development, agricultural development and general economic development on the other. Agrarian reform has also very important social effects. For instance, since slavery in all its practices and manifestations is determined by certain economic, social and political conditions, including particularly archaic agrarian conditions, this reform would, together with other measures, lead to the eradication of practices similar to slavery. Agrarian reform is the essential first step in the reform of national structures and as such one of the prerequisites for social development. In many countries, one of the important structural and social changes which will bring parallel effects is considered to be industrialization. It contributes to achieving the goal of national self-sufficiency and to ensuring political and economic independence based on the right to self-determination. But it must be taken into account that one of the primary goals of society and the State is to try, during the processes of industrialization, to avoid possible negative side-effects of that process. One very important fact is that, by introducing and achieving economic and social reforms, each nation is vested with permanent sovereignty over its natural wealth and resources, which is a prerequisite for social progress and national development. On the other hand, the essential condition for attaining the objectives of economic and social development is the maximum mobilization of national resources—a task of the utmost urgency for the developing countries, because the gap between them and the developed countries is steadily increasing. Only a fresh concerted effort at both the national and the international level will make it possible to accelerate the economic development of the countries of the third world. The establishment of UNCTAD, UNIDO and UNDP was evidence of the growing concern aroused by the situation of the developing countries. Social progress and development are the common concerns of the international community, which should supplement, by concerted international action, national efforts to raise the living standards of peoples.

563. In article 6, the Declaration provides that:

Social development requires the assurance to everyone of the right to work and the free choice of employment.

Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people.

564. The principles of equity and of national and international justice are proclaimed in article 7 of the Declaration as bases of social progress:

The rapid expansion of national income and wealth and their equitable distribution among all members of society are fundamental to all social progress, and they should therefore be in the forefront of the preoccupations of every State and Government.

The improvement in the position of the developing countries in international trade resulting, among other things, from the achievement of favourable terms of trade and of equitable and remunerative prices at which developing countries market their products is necessary in order to make it possible to increase national income and in order to advance social development.

Among the major objectives of a just national development are the equitable distribution of national income, the elimination of colonial exploitation, the achievement of equitable terms of trade, and the participation of the whole population—including the workers and peasants—in the process of social development, in accordance with the principles that economic and social development are interdependent and that social development is but a means to an end: that of increasing the dignity and well-being of man and eliminating all forms of discrimination. A new international economic order based on international equity and justice demands the improvement of the position of the developing countries in international trade, resulting from, among other things, the achievement of favourable terms of trade and of equitable and remunerative prices at which developing countries can market their products, in order to make it possible to increase the national income and to advance social development. The current situation is characterized by the fact that one of the main problems in developing countries is the lack of resources. Although these countries are aware of the problems facing them, their development programmes often do not contain all the necessary social elements, owing perhaps to the fact that there is no accepted over-all approach to development. Some think that social development should have precedence over economic development, others that economic development is more important than social progress, and still others that economic and social development are equally important and, indeed, interdependent. Further problems are caused by the fact that the centre of interest is often outside the developing countries, as most experts come from abroad and, however interested they might be, they inevitably seek to transfer the realities prevailing in their own country to the totally different conditions of the developing country concerned. It has also become apparent that social development is a bottomless pit; investments have been swallowed up, often without any tangible results. With such a multitude of problems and so much room for improvement, it is important not to go too far and not to sacrifice quality to quantity.

565. In article 8, the Declaration states that:

Each Government has the primary role and ultimate responsibility of ensuring the social progress and well-being of its people, of planning social development measures as part of comprehensive development plans, of encouraging and co-ordinating or integrating all national efforts towards this end and of introducing necessary

changes in the social structure. In planning social development measures, the diversity of the needs of developing and developed areas, and of urban and rural areas, within each country, shall be taken into due account.

That principle is incorporated in all the documents relating to the New International Economic Order. An idea that has very widespread support is that each Government has the primary role and ultimate responsibility for ensuring the social progress and well-being of its people, for planning social development measures as part of even, balanced and integrated economic development based on control and planning, for integrating or encouraging and co-ordinating all national efforts towards this end, and for introducing necessary changes in the social structure. In planning social development measures, the diversity of the needs of developing and developed areas, and of urban and rural areas, within each country, must be duly taken into account. The State, and the Government as its administrative authority, has the right to determine such objectives, and any extension of that right is merely misplaced humanitarianism. As in the case with the eradication of colonialism and its consequences, the State has its part to play, by achieving economic and social reforms. At the same time, it must be stressed that, although every State has the right to determine freely its own objectives in social development, in accordance with its particular needs, systems and beliefs, and plays a primary role in social welfare programmes, it should be recognized that a significant contribution can and should be made by local bodies and private citizens. During the realization of reforms, it must always be taken into account that, while it is, of course, essential to ensure his material well-being, man does not live by bread alone. Social development should therefore be based on spiritual and moral ethics which assure for man and society the equilibrium necessary for their advancement. Great stress should be placed on the role of the family in social development, because the moral and social equilibrium of the family contributes to the infrastructure and to the health of the State. In some of the developed countries, unfortunately, moral degradation seems to accompany social development, and this affects the stability and health of the nation. The family as a basic unit of society and the natural environment for the growth and well-being of all its members, particularly children and young persons, should be assisted and protected, so that it may fully assume its responsibilities within the community. Parents have the exclusive right to determine freely and responsibly the number and spacing of their children. Therefore, although the developing countries are aware that rapid changes in political, economic and social structures require new methods and new institutions, the social progress achieved by developed countries is not necessarily the model for social progress in developing countries. It is important to view social development in individual developing countries in the context of the conditions, history, traditions and political background of the country concerned. It must be noted that there are different approaches to the evaluation of the role of structural economic and social reforms in developing countries. According to one of them, which is shared by representatives of many countries, in an age of national and social revolution, social problems may not be raised in isolation from basic economic and political problems; yet it is obvious that measures taken in the social field cannot have the desired effect without radical economic and political reforms. Because the concentration of property in the hands of a few

is an obstacle to social progress and development, there can in fact be no social progress without basic change in the economic and political system to eliminate backwardness resulting from the use of old-fashioned farming methods, vast estates, weak industries financed by foreign capital, poverty, unemployment and illiteracy. Thanks to the radical reform of their economic and social structure, developing countries can become industrialized societies with a modern agricultural system, a high standard of living and social progress. Social progress requires the elimination of exploitation, encouraging rapid economic and social progress, and presupposes the participation of all members of society in productive and socially useful labour, and the establishment of a form of ownership of land and of the means of production which precludes the exploitation of man by man, ensures equal property rights for all and creates conditions of genuine equality among people. Social progress in the developing countries depends on a radical revolution that would change social structures and bring about, *inter alia*, the full emancipation of women, compulsory education of the young and the abolition of adult illiteracy—in other words, the vigorous participation of all segments of society in the country's activities. Many countries which have embarked on the path of socialism are implementing far-reaching economic development programmes which are closely co-ordinated with social development programmes, based on two essential concepts of socialism: first, that production must fulfil a social function benefiting the masses, and, secondly, that the Government should exercise general control over the means of production in order to eliminate the pernicious effects of uneven development. Although the problems of developing countries are very important in the context of economic and social development, the diversity of the present-day world, with respect to levels of development and political and social structures and relations must be appreciated as a factor limiting social development. On the other hand, the problems of social development are of urgent significance not only to the developing countries, for even in the developed countries there are segments of the population whose social situation is far from satisfactory. In spite of the widening gulf between them, developed and developing countries have similar social problems. Problems of labour, social insurance, unemployment, women's rights and education exist in all societies to a certain extent. The industrialized nations and the developing countries are pursuing a common objective, namely, to find a practical solution to the social problems existing in their own countries. However, those solutions should aim at establishing social justice, as well as material well-being. Although social justice is supported in principle by all nations, it is denied in many countries, where peoples are human only in name.

566. At the same time, article 9 of the Declaration speaks of the shared responsibility of the international community in the field of social progress and development:

Social progress and development are the common concerns of the international community, which shall supplement, by concerted international action, national effort to raise the living standards of peoples.

Social progress and economic growth require recognition of the common interest of all nations in the exploration, conservation, use and exploitation, exclusively for peaceful purposes and in the interests of all mankind, of those areas of the environment such as outer space and the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, in accordance with the purposes and principles of the Charter of the United Nations.

567. The main purpose of social progress and development is the constant raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the principal objectives set forth in articles 10 to 13 of the Declaration, namely: the assurance of the right to work; the elimination of hunger and malnutrition; the achievement of the highest standards of health and the provision of health protection for the entire population; the eradication of illiteracy and the assurance of universal access to culture and to free education; the provision for all of adequate housing and community services; the provision of comprehensive social security schemes; the protection of the rights of the mother and child; the protection of the rights and the ensuring of the welfare of children, the aged and the disabled and the provision of protection for the handicapped; the education of young people in, and the promotion among them of, the ideals of justice and peace, mutual respect and understanding among peoples, and the promotion of the full participation of young people in the process of national development; the provision of social defence measures and the elimination of conditions leading to crime and delinquency; action to ensure that all individuals are made aware of their rights and obligations and receive the necessary aid in the exercise and safeguarding of their rights; the creation of conditions for rapid and sustained social and economic development, particularly in the developing countries; the elimination of all forms of discrimination and exploitation and all other practices and ideologies contrary to the purposes and principles of the Charter of the United Nations; the elimination of all forms of foreign economic exploitation; the equitable sharing of scientific and technological advances by developed and developing countries and a steady increase in the use of science and technology for the benefit of the social development of mankind; the establishment of a harmonious balance between scientific, technological and material progress and the intellectual, spiritual, cultural and moral advancement of humanity; the protection and improvement of the human environment.

C. Means and methods of achieving the objectives of social progress and development

568. The Declaration on Social Progress and Development advocates the following means and methods in articles 14 to 27: planning for social progress and development, as an integrated part of balanced over-all development planning; the establishment, where necessary, of national systems for framing and carrying out social policies and programmes; the promotion of basic and applied social research; the adoption of measures to ensure the effective participation, as appropriate, of all the elements of society in the preparation and execution of national plans and programmes of economic and social development; the adoption of measures for an increasing rate of popular participation in the economic, social, cultural and political life of countries; the mobilization of public opinion, at both national and international levels, in support of the principles and objectives of social progress and development; the dissemination of social information, at the national and the international level; the maximum mobilization of all national resources and their rational and efficient utilization; the promotion of increased and accelerated productive

investment in social and economic fields and of employment; the orientation of society towards the development process; progressively increasing provision of the necessary budgetary and other resources required for financing the social aspects of development; the achievement of an equitable distribution of the national income; the adoption of measures aimed at the prevention of such an outflow of capital from developing countries as would be detrimental to their economic and social development; the adoption of measures to accelerate the process of industrialization, especially in developing countries; integrated planning to meet the problems of urbanization and urban development; comprehensive rural development schemes; measures for the appropriate supervision of the utilization of land in the interests of society; the adoption of appropriate legislative, administrative and other measures ensuring to everyone not only political and civil rights, but also the full realization of economic, social and cultural rights without any discrimination; the promotion of democratically based social and institutional reforms; the adoption of measures to increase and diversify agricultural production through, *inter alia*, the implementation of democratic agrarian reforms and to ensure an adequate and well-balanced supply of food, its equitable distribution among the whole population and the improvement of nutritional standards; the adoption of measures to introduce, with the participation of the Government, low-cost housing programmes in both rural and urban areas; the development and expansion of the system of transportation and communications, particularly in developing countries; the provision of free health services to the whole population; the enactment and establishment of legislative measures and administrative regulations, with a view to the implementation of comprehensive programmes providing social security schemes and social welfare services; the adoption of measures for the provision of social welfare services to migrant workers and their families; the institution of appropriate measures for the rehabilitation of mentally or physically disabled persons, especially children and young persons; the provision of full democratic freedoms for trade unions; the improvement of health and safety conditions for workers; the adoption of appropriate measures for the development of harmonious industrial relations; the training of national personnel and cadres; the adoption of measures to accelerate the extension and improvement of general, vocational and technical education and of training and retraining, which should be provided free at all levels; the raising of the general level of education; the development and expansion of national information media, and their rational and full use for the continuing education of the whole population and encourage its participation in social development activities; the constructive use of leisure, particularly that of children and adolescents; the formulation of national and international policies and measures to avoid the "brain drain" and obviate its adverse effects; the development and co-ordination of policies and measures designed to strengthen the essential functions of the family as a basic unit of society; the formulation and establishment, as needed, of programmes in the field of population; the establishment of appropriate child-care facilities in the interest of children and working parents; the laying down of economic growth rate targets for the developing countries within the United Nations policy for development, high enough to lead to a substantial acceleration of their rates of growth; the provision of greater assistance on better terms; the implementation of the aid

volume target of a minimum of 1 per cent of the gross national product at market prices of the economically advanced countries; the general easing of the terms of lending to the developing countries through low interest rates on loans and long grace periods for the repayment of loans, and the assurance that the allocation of such loans will be based strictly on socio-economic criteria, free of any political considerations; the provision of technical, financial and material assistance, both bilateral and multilateral, to the fullest possible extent and on favourable terms, and the improved co-ordination of international assistance for the achievement of the social objectives of national development plans; the provision to the developing countries of technical, financial and material assistance on favourable conditions, to facilitate the direct exploitation of their national resources and natural wealth by those countries, with a view to enabling their peoples to benefit fully from those resources; the expansion of international trade based on principles of equality and non-discrimination, the rectification of the position of developing countries in international trade through equitable terms of trade, a general non-reciprocal and non-discriminatory system of preferences for the exports of developing countries to the developed countries, the establishment and implementation of general and comprehensive commodity agreements, and the financing of reasonable buffer stocks by international institutions; the intensification of international co-operation, with a view to ensuring the international exchange of information, knowledge and experience concerning social progress and development; the broadest possible international technical, scientific and cultural co-operation and the reciprocal utilization of the experience of countries with different economic and social systems and at different levels of development, on the basis of mutual advantage and strict observance of and respect for national sovereignty; the increased utilization of science and technology for social and economic development; arrangements for the transfer and exchange of technology, including know-how and patents, to the developing countries; the establishment of legal and administrative measures for the protection and improvement of the human environment at both the national and the international level; the use and exploitation, in accordance with the appropriate international régimes, of the resources of areas of the environment such as outer space and the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction, in order to supplement national resources available for the achievement of economic and social progress and development in every country, irrespective of its geographical location, special consideration being given to the interests and needs of the developing countries; compensation for damage, whether social or economic in nature — including restitution and reparations — caused as a result of aggression and of illegal occupation of territory by the aggressor; the achievement of general and complete disarmament and the channelling of the resources thus progressively released for use in promoting economic and social progress for the welfare of people everywhere and, in particular, for the benefit of the developing countries; the adoption of measures contributing to disarmament, including, *inter alia*, the complete prohibition of tests of nuclear weapons, the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and the prevention of the pollution of oceans and inland waters by nuclear wastes.

D. Action taken by the United Nations in the social field

569. Most of the work of the United Nations goes into the varied programmes aimed at achieving a better life for all people of the world. Since the first tentative steps in its early years, the Organization has greatly expanded its activities in the economic and social field. Underlying these efforts is the concept stated in Article 55 of the United Nations Charter that conditions of stability and well-being are necessary for peaceful and friendly relations among nations. Article 55 proclaims the duty of the United Nations to promote higher standards of living, full employment, and conditions of economic and social progress and development, solutions to international economic, social, health and related problems, and international cultural and education co-operation.

570. In recognition of this responsibility of the world community, the General Assembly, in its resolution 1710 (XVI), of 19 December 1961, designated the 1960s as the United Nations Development Decade and called upon all Member States to unite in a sustained effort to break through the cycle of poverty, hunger, ignorance and disease which still afflicts much of the world.

571. The need for an international development strategy was recognized before the first Decade ended, and intensive work over a period of years led to agreement on the International Development Strategy for the Second United Nations Development Decade (the 1970s). It was approved by the General Assembly in its resolution 2626 (XXV), of 24 October 1970. The International Development Strategy sets forth targets for economic and social progress and expresses the commitment of Member States to carry out specific measures so that the goals can be attained. Other goals include *inter alia* a more equitable distribution of income and wealth for promoting social justice, the efficiency of production, higher employment, greater income security and improved facilities for education, health, nutrition, housing and social welfare.

572. As one of its major efforts, the United Nations is seeking the best possible use of human resources. It is giving special attention to two problems found in many developing countries—rising population and an increasing shift of families from the countryside to cities, with an accompanying need for more housing, urban facilities and social services. Similarly, aid is offered in community development, to improve living conditions in both rural and urban areas, in land reform programmes, and in efforts to deal more effectively with youth problems, delinquency and crime.

573. Other United Nations efforts for economic and social advancement include studies to compile information and analyse needs; the holding of conferences at which experience is pooled and intergovernmental agreements may be drawn up on trade problems, for example; and aid to individual countries, at their request, from UNDP or WFP. In addition, activities which meet needs in particular areas are fostered by regional commissions in Africa, Asia, Europe and Latin America.

574. International co-operation embraces not only the problems between the “haves” and the “have-nots” but also the collective issues which all nations must at some time face as a consequence of the most recent technical and

scientific advances. Increasing use has been made of international conferences, convened by the General Assembly or the Economic and Social Council, to deal with specific problems of global concern. Among such world conferences in the 1970s were the United Nations Conference on the Human Environment (Stockholm, 1972), which agreed on measures needed to combat pollution and protect the environment, and resulted in the establishment of the UNEP, based in Nairobi; the third United Nations World Population Conference (Bucharest, 1974), at which a World Population Plan of Action was drawn up setting forth principles and recommendations on population policies; the World Food Conference (Rome, 1974), which initiated efforts to improve food stocks and production, so that adverse weather or climate will not cause mass starvation; and the Conference of the International Women’s Year (Mexico City, 1975), aimed at improving the status of women and ending discrimination on grounds of sex. Among others, there have been world conferences on the law of the sea, the peaceful uses of atomic energy and of outer space, land reform, and the prevention of crime and treatment of offenders.

575. UNCTAD was established as a permanent organ of the General Assembly by its resolution 1995 (XXIX), of 30 December 1964. In pursuing the goals of the Second United Nations Development Decade, the particular concern of UNCTAD is to help developing countries to expand their trade and thereby obtain increasing resources essential for their self-sustained growth. The Conference comprises all Members of the United Nations, as well as States which do not belong to the United Nations but are members of one or more of the specialized agencies.

576. The co-operative efforts of the United Nations and its related agencies in the economic and social fields are being expanded and streamlined, priority being given to problems considered to have a direct bearing on development. Increased stress on direct operational field activities is reflected in the stepped-up pace of the United Nations Development Programme, a voluntarily financed operation carried out by the United Nations and 16 related agencies. UNDP is the world’s largest channel for multilateral technical and pre-investment assistance to the low-income countries. It is active in virtually every economic and social sector—including crop and animal production, fishing, forestry, mining, manufacturing, power, transport, communications, housing and building, trade and tourism, health environmental sanitation, education and training, community development economic planning and public administration. The 7,000 and more pre-investment and technical assistance projects supported by UNDP have two general and closely related aims. The first is that of helping low-income countries to create favourable conditions for mobilizing development capital on a sound and business-like basis from both domestic and external sources. The second is that of preparing the fully effective use of such investment capital, and of all other available economic and human assets, in order to increase economic productivity and improve standards of living.

577. A new United Nations programme, which came into operation on 1 January 1971—aimed primarily at enabling young men and women to dedicate a certain period of their lives to the cause of development—was initiated by the General Assembly (resolution 2659 (XXV) of 7 December 1970) with the establishment of the United Nations Volunteers. This programme, which is adminis-

tered by UNDP, is open to men and women over the age of 21 who meet the required standards in regard to health, personal qualifications and educational and technical background.

578. In order to promote industrial development and to help to accelerate the industrialization of developing countries, the General Assembly established by resolution 2152 (XXI) of 17 November 1966 UNIDO, on 1 January 1967. The Assembly also entrusted UNIDO with the task of co-ordinating all activities of the agencies of the United Nations system in this field.

579. In March 1965, the United Nations established UNITAR, which is an autonomous body within the framework of the United Nations, headed by an Executive Director and with its own Board of Trustees. The Institute is supported by voluntary contributions from Member States, foundations and individuals. The research programme of the Institute is concerned with studies of problems which are of direct concern to the international community and to the United Nations. These include studies on the peaceful settlement of disputes; decolonization; co-ordination within the United Nations system; relations between the United Nations and intergovernmental organizations; co-operation between different social systems; the situation of women in the United Nations; international youth organizations and the United Nations; the "brain drain"; and development problems of the future.

580. The United Nations University was established by General Assembly resolution 2951 (XXVII) of 11 December 1972, and its Charter was adopted by resolution 3081 (XXVIII) of 6 December 1973. It is jointly sponsored by the United Nations and UNESCO. Unlike conventional universities, the United Nations University does not grant degrees or operate within the confines of a central campus. Its function is to provide a network for communication, co-operation and the exchange of ideas and information among scholars and institutions engaged in higher learning. It will also focus on research on global problems. According to the University's Charter, research programmes will cover coexistence between peoples having different cultures, languages and social systems; peaceful relations between States and the maintenance of peace and security; human rights; economic and social change and development; the environment and the proper use of resources; basic scientific research and the application of the results of science and technology in the interests of development; universal human values related to the improvement of the quality of life. The initial activities of the University are concentrated in three areas: world hunger, human and social development, and management and use of natural resources. The University will disseminate the knowledge gained to the United Nations and its agencies, to scholars and to the public. A central objective is the continuing

growth of vigorous academic and scientific communities everywhere. Particular attention will be given to the vital learning and research needs of developing countries, with the aim of reducing the "brain drain", the outflow of skilled and educated people from developing countries. The University may also undertake training for international or national technical assistance programmes.

E. The interrelationship between social development and human rights

581. Such essential human rights as the economic and social rights are directly connected with social development. Those rights are the right to work, the right to just and favourable conditions of work, the right to free activities of trade unions, the right to social security, the right of the family, mothers and children to protection and assistance, to an adequate standard of living and to the continuous improvement of living conditions, the right to the enjoyment of the highest standard of physical and mental health, and the right to education.

582. It is quite obvious that a favourable social development contributes to the full enjoyment of these human rights. History shows that progressive changes are very likely to create conditions for really ensuring economic and social rights, and for realizing them in favour of the whole population. At the same time, the respect for and the observance of these rights is an essential contribution to social development. Only through the real enjoyment of those rights by all individuals can their participation in social life be achieved. Such participation is a prerequisite and a basis for any important social development.

583. As regards civil and political rights, the relationship of their realization to social development is clear. On the other hand, these rights, contrary to economic and social rights, may be considered as being primarily individual rights. This circumstance gives rise to a problem which is reflected in international instruments in the field of human rights. The guiding principle in this regard can be formulated as follows: the full enjoyment of civil and political rights must not have adverse consequences for society and detract from the performance of the duties of individuals towards the community. On this point, reference may be made to the Universal Declaration of Human Rights, which underlines everyone's duties to the community and foresees the possibility of limitations of rights and freedoms, and also to some provisions of the International Covenant on Civil and Political Rights establishing limitations provided by law and necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

Chapter VII

THE RIGHT OF PEOPLES FREELY TO PURSUE THEIR CULTURAL DEVELOPMENT

A. General considerations

584. By virtue of the principle of equal rights and self-determination of peoples, all peoples have the right, in full freedom and without external interference, to pursue their cultural development. Thus, the right of self-determination appears as an insurance and safeguard of the cultural development of peoples. On the other hand, participation in culture serves the individual development of a human being and plays a significant part in the creation of modern structures of community life. Participation in culture presents a specific social situation in which important values, standards and attitudes are presented to and strengthened in the individual. Participation in culture is an important form of socialization and education and leads to the formation of social personality. In an age of scientific and technological revolution, this activity becomes particularly significant, since owing to the existence of the mass media, there is the possibility of moulding specific features, attitudes and aspirations in the members of society on a very large scale. Such a possibility has never existed before. Participation in culture helps to construct a modern personality type with such traits as competence, discipline, diligence and rationality.

585. Mass access to culture is one of the mainsprings of a modern society. In the developed countries, it helps to maintain the positive elements of historic and national tradition (and thus strengthens patriotism in its proper sense); in the developing countries, it helps to create national and linguistic ties. And national consciousness is an important basis for the mobilization of social powers directed towards common targets.

586. Through the general access to culture, the individual has an opportunity to acquaint himself with other nations' cultures and consequently with universal cultural values. All this promotes self-determination, understanding and co-operation between nations for the benefit of justice and peace.

587. Cultural development denotes cultural life, it is the sum of all the practices and attitudes which affect man's capability to express himself, determine his position in the world, create his environment and communicate with all civilizations. Cultural development may be either a natural process or one deliberately brought about. It results from a rise in living standards combined with technological progress.

588. For the developing countries, since it results also from the International Development Strategy, such development involves general development; cultural well-being is a higher collective good which societies cannot afford to forgo without destroying themselves. Culture occupies a special

place, corresponding to the loftiest image which men, individually and collectively, have of their own destiny. Therefore cultural development is both an ultimate aim of political action and also the means of giving every individual a sense of his responsibility in the common work of society and mankind, and the cultural policies of States must reflect the aims of man by resolutely confronting the future.

589. The word "culture", in the widest sense, expresses the very essence of man, and culture is involved in everything that concerns intellectual, ethical, physical, and even technical training, including the sum total of human activities, which make man different from the rest of nature. In a restricted sense, it stands for what might be termed "civilization", everything which characterizes a people, the right of a people to claim what constitutes its originality.

590. Culture may be defined as the sum total of material and spiritual values created by man in the process of socio-historical evolution and which, in the last analysis, are determined by objective laws of social progress; it gives him the ability to use his achievements in order to subdue the elemental forces of nature, to solve imminent and urgent problems of social development.

591. Culture is also a way of life, an historically created system embodying explicit and implicit forms of living, which tends to be shared by all representative members of a group at a specific point in time.

592. Culture comprises all forms of expression, thought and action peculiar to a given community. It includes conceptions, beliefs, institutions and techniques which impose the same style of living on the members of a society; it ensures the unity and stability, while undergoing the transformations, of that society — transformations to which moreover it continually contributes. Culture is a permanent human, and therefore universal fact, but one which assumes particular styles according to the particular psychology, historical background, environment and other elements. Each people has its heritage, a set of values which assume a concrete form in its attitudes and in traditional institutions, and no culture has any chance of survival unless it is constantly renewed and recreated.

593. The culture of a given society is determined, in the last analysis, by socio-economic conditions, by the level of production. Any culture has a relative independence and to consider such independence as absolute would lead as a rule, to two mistakes: (a) a necessary condition is identified with a sufficient one, culture being reduced to spiritual values only, thereby creating the illusion that the problem of cultural interaction may be solved on a purely theoretical level, without the creation of the necessary social, economic and political prerequisites for such a solution; and (b) "cultural relativism" precludes a correct theoretical understand-

ing of the problem, because it cannot reveal the very foundation of spiritual culture.

594. On the other hand, if only the immediate relation of culture to the development of production is emphasized, the complicated character of this very relation and the relative independence of culture is disregarded, and this creates another illusion, i.e. that the development of production automatically leads to the solution of all cultural problems. This results in a rejection of the specific features of culture, the disregarding of the relationship between culture and humanism, and the problem of neglect of the all-round and harmonious development of an individual.

595. Culture is the result of man's creative activity in the material and spiritual sphere, and it should not be reduced merely to a spiritual element. Culture is the result of the creative activity of peoples, of the masses, and for this reason it is necessary to eliminate alienation in order to preserve culture.

596. Culture is a social phenomenon resulting from human interaction. It is created not by socially isolated individuals but by the whole of society, by the masses. Every member of society can and must enjoy his or her cultural rights. Though created by the masses, culture may not and cannot be always used for their benefit. This injustice is based on the social division of labour. Cultural rights and cultural interaction depend on the socio-economic and political structure of society. Socially significant relationships are the most important form of the manifestation of an individual as the bearer of cultural values. It is a certain social system that creates an objective need for the cultural development of an individual, for the use of his or her gifts and abilities, by providing the same conditions for all members without exception. There is no one common culture in the world today. A bitter struggle is waged for the retention of cultural values and traditions, and rights to cultural benefits, and this sharpens the problem of cultural interaction. Moreover, the existence of many different national cultures brings the problem of broad cultural interaction to the fore.

597. If everyone has the right freely to participate in the cultural life of the community, as is stated in the Universal Declaration of Human Rights adopted by the General Assembly, the authorities responsible for each community have a duty, so far as their resources permit, to provide him with the means for such participation. Everyone has the right to culture, just as he has the right to education and the right to work, and the authorities, so far as possible, should provide him with the means to exercise this right. This is the basis and the first purpose of any cultural policy. The other basis is development, in view of the link between cultural development and general development. Cultural development is not merely associated with economic development, it is also an essential condition without which society cannot adapt itself to the rapid progress of technology. To make people capable of understanding and shaping the new world is a prerequisite of life-long education, itself the principal condition of development. Peoples must be able to cope with changes imposed by development, and this capacity can be acquired through information, through their assumption of responsibility, training, learning to express themselves, which, in combination, constitute cultural development, through which the progress of the individual, as well as that of the community, is ensured. Policy being powerless, in this age of mass information, without

the support of the masses, cultural action is more and more effective in bringing about the changes needed for the progress of society. Cultural development gives an ideal, strength and vitality to the cause of progress.

598. There is a field of culture which is being eroded: national cultures are being eroded by the powerful alien cultures which are moving in. They are basically on the plane of industry, technology and science, fields which influence the way of life of whole peoples in developing countries.

599. Problems of cultural decolonization are widely discussed in countries which have recently won political independence from colonial rule; cultural decolonization should lead to a revival and an extension of cultural human rights. In the developing countries, traditional cultures, owing to their fragility and the absence of powerful socio-economic support, are particularly vulnerable to the erosive action of the technological civilization, which is becoming universal. The protection of these cultures and their adaptation with a view to enabling them to identify themselves with the exigencies of the modern world are the actual concern of the international community. The preservation of authentic cultures is a method of fighting against the standardization of ways of living and the shoddy values transmitted by the process of standardization and by the so-called "condensed culture". The universe of the machine and the amenities of civilization, while they lessen men's labour and guarantee a well-being to which only a privileged minority could formerly aspire, do not offer man a justification for living. The duty to assimilate the techniques by which nature is dominated is inseparable from the right for every people to be fully the master of its own culture. For this, the traditional ways of living must face, survive and adapt to, the challenges of the modern scientific approach.

600. In the field of culture, education and science, co-operation is necessary for better human understanding, for the consolidation of liberty, justice and peace and for progress and development, because political liberation, social emancipation and scientific progress have brought about fundamental changes in the conscience and life of man. Culture contributes to broadening the spiritual horizon and to enriching human life; all human cultures have their specific values and can contribute to general progress; many cultures were annihilated and cultural relations were interrupted under colonial domination, but international understanding and progress necessitate the resurrection and rehabilitation of these cultures, the free expression of their national identity and character, and also a more profound reciprocal appreciation of their values for the enrichment of the cultural heritage of humanity. For the advancement of humanity, education is a fundamental necessity and science also not only adds to the wealth and well-being of peoples, but adds new values to civilization. The promotion of international co-operation in the field of education may ensure equal possibilities of education for each human being; the growth of assistance in the field of education contributes to developing reciprocal understanding and to the appreciation of various cultures and ways of life in the light of one's own education; the encouragement and intensification of a free and systematic exchange of scientific information is of great importance. The transfer of the science and technology of developed countries to the developing countries contributes especially to the application of the advantages of scientific and technological progress in the promotion of develop-

ment. There is also a great gap between the capacities of communication between developed and developing countries, which is the heritage of a colonial past and which engendered a situation of dependence and domination in which the majority of countries were reduced to the role of passive receivers of tendentious information. The identification and affirmation of their national and cultural identity have rendered necessary the rectification of a serious imbalance and the taking of urgent measures to give new impetus to co-operation in this field between developing countries; the emancipation and the development of national means of information is a part of their struggle for political, economic and social independence, since dependence in the field of information hampers political and economic progress. In this field, a more complete diffusion of objective information concerning events in the developing countries in social, economic, cultural and other fields is of great importance.

B. Cultural interaction and co-operation

601. Social, economic, political and ideological processes in the world are closely connected with cultural interaction. There is a wide interaction between different cultures. Cultural interaction is reflected in the Declaration of the Principles of International Cultural Co-operation¹⁶¹ adopted by UNESCO on 4 November 1966, which states that "ignorance of the way of life and customs of peoples still presents an obstacle to friendship among the nations, to peaceful co-operation and to the progress of mankind" that "Nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind" and that "cultural co-operation shall be carried on for the mutual benefit of all the nations practising it". It is not only a factor in objective social progress, but also an effect of that progress.

602. Cultural interaction is a real process of mutual influence and mutual enrichment. This process is based on the objective law of social progress. Cultural interaction precludes the imposition of a culture on another people, and also does not permit the absorption, the submission or the holding back of the cultural development of another nation.

603. The universal content and the specific national features in any national culture should be distinguished. One of the specific features of the historical process of cultural interaction is the gradual creation of a universal culture, incorporating common democratic elements of many national cultures. Universal culture does not exist in its pure form as distinct from national cultures. On the other hand, any culture belonging to a particular nation is endowed with a common content belonging to everyone. The general exists in and through the particular, the particular being the necessary form of the manifestation of the general, that is, a mode of its existence. Natural interaction is a form of manifestation of cultural rights, which are part and parcel of human rights. It should not lead to group separatism but, on the contrary, should contribute to the strengthening of spiritual communication and cultural unification. It implies

(a) mutual enrichment with a universal cultural content; and (b) deep respect for specific national features of the culture of other nations. To involve the broad masses in the exercise of their cultural rights and to create real conditions for that exercise is of the utmost importance today. Cultural interaction implies continuity—a combination of growing interest in specific national peculiarities of other peoples' culture and a retention of the cultural heritage of all mankind, together with due care therefor.

604. Cultural interaction ought not to lead to the absorption of one culture by another and to the elimination of unique cultural values, and all necessary measures should be taken to protect the cultural values of mankind from destruction; these values express the very spirit of the past and the present. Cultural interaction leads to mutual understanding. Cultural interaction should imply, first, the mutual enrichment of different cultures and, secondly deep respect for the specific national features of culture in other nations; this is an absolute necessity.

605. The Constitution of UNESCO declares that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed"¹⁶² and that peace must be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind. This text also states that the wide diffusion of culture and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern.

606. That is why the General Conference of UNESCO proclaimed, at its fourteenth session, in 1966, the Declaration of the Principles of International Culture Co-operation, so that Governments, authorities, organizations, associations and institutions responsible for cultural activities might constantly be guided by those principles; and for the purpose, as set out in the Constitution of the Organization, of advancing, through the educational, scientific and cultural relations of the peoples of the world, the objectives of peace and welfare that are defined in the Charter of the United Nations.

607. In the evaluation of this Declaration, the following texts have to be taken into account: the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples and the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty proclaimed successively by the General Assembly of the United Nations.

608. The Declaration of the Principles of International Cultural Co-operation contains the following provisions:

Article I

1. Each culture has a dignity and value which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.

¹⁶¹ UNESCO, *Records of the General Conference, Fourteenth Session, Resolutions*, pp. 86 et seq., resolution 8.1.

¹⁶² UNESCO, *Conference Manual*, Paris, 1979, p. 7.

3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

Article II

Nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind.

Article III

International cultural co-operation shall cover all aspects of intellectual and creative activities relating to education, science and culture.

Article IV

The aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, shall be:

1. To spread knowledge, to stimulate talent and to enrich cultures;

2. To develop peaceful relations and friendship among the peoples and bring about a better understanding of each other's way of life;

[...]

5. To raise the level of the spiritual and material life of man in all parts of the world.

[...]

Article VI

International co-operation, while promoting the enrichment of all cultures through its beneficent action, shall respect the distinctive character of each.

Article VII

1. Broad dissemination of ideas and knowledge, based on the freest exchange and discussion, is essential to create activity, the pursuit of truth and the development of the personality.

2. In cultural co-operation, stress shall be laid on ideas and values conducive to the creation of a climate of friendship and peace. Any mark of hostility in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information, to ensure its authenticity.

Article VIII

Cultural co-operation shall be carried on for the mutual benefit of all the nations practising it. Exchanges to which it gives rise shall be arranged in a spirit of broad reciprocity.

Article IX

Cultural co-operation shall contribute to the establishment of stable, long-term relations between peoples, which should be subjected as little as possible to the strains which may arise in international life.

Article X

Cultural co-operation shall be specially concerned with the moral and intellectual education of young people in a spirit of friendship, international understanding and peace and shall foster awareness among States of the need to stimulate talent and promote the training of the rising generations in the most varied sectors.

Article XI

1. In their cultural relations, States shall bear in mind the principles of the United Nations. In seeking to achieve international co-operation, they shall respect the sovereign equality of States and shall refrain from intervention in matters which are essentially within the domestic jurisdiction of any State.

2. The principles of this Declaration shall be applied with due regard for human rights and fundamental freedoms

609. States are developing co-operation in cultural and educational exchanges and the broader dissemination of

information. This co-operation should contribute to the strengthening of peace and understanding among peoples and to the spiritual enrichment of the human personality without distinction as to race, sex, language or religion. It should take place irrespective of the political, economic and social system of the State, in order to create better conditions in these fields, to develop and strengthen existing forms of co-operation and to work out new ways and means appropriate to these aims.

610. Cultural co-operation should take place with full respect for the principles guiding relations among States, including for example, sovereign equality of States, respect for the rights inherent in sovereignty, non-intervention in internal affairs, respect for human rights, the principle of equal rights and self-determination of peoples, co-operation among States and the fulfilment in good faith of obligations under international law.

611. Cultural exchanges and co-operation contribute to a better understanding among peoples and thus promote lasting understanding among States. In different international forums, the view has been expressed that, with the development of mutual confidence and the further improvement of relations between States, further efforts will continue towards progress in this field, cultural exchanges will be increased substantially with regard both to persons and to cultural works, and States will develop among themselves an active co-operation, both at the bilateral and the multilateral level, in all cultural fields. The mutual development of such relations will contribute to the enrichment of the respective cultures of States, while ensuring that the originality of each is respected, and the reinforcement among them of a consciousness of common values. In this field, States have the following objectives: (a) to develop the mutual exchange of information, with a view to acquiring better knowledge of each other's cultural achievements, (b) To improve the facilities for the exchange and for the dissemination of cultural property, (c) to promote the access of all to their cultural achievements, (d) to develop contacts and co-operation among persons active in cultural matters, (e) to seek new areas and forms of cultural co-operation.

612. To expand and improve, at the various levels of co-operation, links in the field of culture, States can in particular conclude agreements on a bilateral or multilateral basis, providing for the extension of relations among competent State institutions and non-governmental organizations in the field of culture, as well as relations between people engaged in cultural activities.

613. States can also contribute to the improvement of facilities for cultural exchanges and the dissemination of cultural property, in fields such as music, the theatre and the plastic and graphic arts, and encourage, within their cultural policies, the further development of interest in the cultural heritage of the other participating States, conscious of the merits and the value of each culture. To contribute, by appropriate means, to the development of contacts and co-operation in the various fields of culture, especially among creative artists and people engaged in cultural activities, States are expected in particular to make efforts to:

(a) Encourage contacts among creative and performing artists and artistic groups, with a view to their working together, making known their works in other participating States or exchanging views on topics relevant to their common activity;

(b) Encourage, where necessary through appropriate arrangements, exchanges of trainees and specialists and the granting of scholarships for basic and advanced training in various fields of culture such as the arts and architecture, museums and libraries, literary studies and translation, and contribute to the creation of favourable conditions for acceptance in their respective institutions;

(c) Encourage the exchange of experience in the training of organizers of cultural activities, as well as of teachers and specialists in fields such as the theatre, opera, ballet, music, and the fine arts;

(d) Continue to encourage the organization of international meetings among creative artists, especially young creative artists, on current questions of artistic and literary creation which are of interest for joint study;

(e) Study other possibilities for developing exchanges and co-operation among persons active in the field of culture, with a view to obtaining a better knowledge of the cultural life of the participating States.

614. It is very important that States should encourage the search for new areas and forms of cultural co-operation, contributing for this purpose, to the conclusion among interested parties, where necessary, of appropriate agreements and arrangements, and in this context to promote:

(a) Joint studies concerning cultural policies, in particular in their social aspects and as they relate to planning, town-planning, education and environmental policies, and the cultural aspects of tourism;

(b) the exchange of knowledge in the realm of cultural diversity, with a view to contributing to a better understanding on the part of interested parties of such diversity, where it occurs;

(c) The exchange of information, and, as may be appropriate, meetings of experts, the preparation and the execution of research programmes and projects on the subjects indicated above and their joint evaluation, and the dissemination of the results of such evaluation.

(d) Such forms of cultural co-operation and the development of such joint projects as:

(i) International events in the fields of the plastic and graphic arts, cinema, theatre, ballet, music, folklore, etc.; book fairs and exhibitions, joint performances of operatic and dramatic works, performances given by soloists, instrumental ensembles, orchestras, choirs and other artistic groups, including those composed of amateurs, due attention being given to the organization of international cultural youth events and the exchange of young artists;

(ii) The inclusion of works by writers and composers from the other States in the repertoires of soloists and artistic ensembles;

(iii) The preparation, translation and publication of articles, studies and monographs, of low-cost books and of artistic and literary collections, suited to making cultural achievements better known, as well as meetings for this purpose among experts and representatives of publishing houses;

(iv) The co-production and the exchange of films and of radio and television programmes, through the promotion, in particular, of meetings among producers, technicians and representatives of the public authorities, with a view to working out favourable conditions

for the execution of specific joint projects, and the encouragement, in the field of co-production, of the establishment of international filming teams;

(v) The implementation of joint projects for conserving, restoring and showing to advantage works of art, historical and archaeological monuments and sites of cultural interest, with the help, in appropriate cases, of international organizations of a governmental or non-governmental character, and of private institutions competent and active in these fields.

615. Co-operation in education is also important. The development of relations of an international character in education and science contributes to a better mutual understanding and is to the advantage of all peoples and to the benefit of future generations. That is why States should facilitate the further development of exchanges of knowledge and experience and of contacts, on the basis of special arrangements, where these are necessary, between organizations, institutions and persons engaged in education and science, and should strengthen the links among educational and scientific establishments and also encourage their co-operation in sectors of common interest, particularly where the levels of knowledge and resources require efforts to be concerted internationally. Appropriate ways and means for the expansion and improvement of co-operation and links in education and science can in particular be concluded by bilateral or multilateral agreements providing for co-operation and exchanges among State institutions, non-governmental bodies and persons engaged in activities in education and science, and by the promotion of the conclusion of direct arrangements between universities and other institutions of higher education and research, in the framework of agreements between Governments, where appropriate.

616. States should increase the exchange of information on facilities for study and courses open to foreign participants, and on the conditions on which they will be admitted and received, and should encourage the award of scholarships for study, teaching and research in their countries to scholars, teachers and students of other States, and establish, develop and encourage programmes providing for the broader exchange of scholars, teachers and students, including the organization of symposia, seminars and collaborative projects, and the exchange of educational and academic information, such as university publications and materials from libraries. States are expected to broaden and improve co-operation and exchanges in the field of science, and in particular: (a) To increase, on a bilateral or multilateral basis, the exchange and dissemination of scientific information and documentation; (b) To facilitate the extension of communications and direct contacts between universities, scientific institutions and associations and among scientists and research workers; (c) To develop, in the field of scientific research, on a bilateral and multilateral basis, the co-ordination of programmes carried out in the participating States and the organization of joint programmes which may involve the combined efforts of scientists and in certain cases the use of costly or unique equipment.

617. There is no doubt that the study of foreign languages and civilizations is an important means of expanding communication among peoples for their better acquaintance with the culture of each country, and for the strengthening of international co-operation. States should to this end stimulate the further development and improvement of foreign language teaching and the widening of the choice of

languages taught at various levels, paying due attention to less widely-spread or studied languages, and to encourage the association, where appropriate, of the teaching of foreign languages with the study of the corresponding civilizations.

618. In the field of information, the world community is nowadays perfectly conscious of the need for an ever wider knowledge and understanding of the various aspects of life in all countries. This process contributes to the growth of confidence between peoples. Recognizing the importance of the dissemination of information, States should facilitate the freer and wider dissemination of information of all kinds, and encourage co-operation in the field of information and the exchange of information with all other countries. At the same time, it should be noted that the mass media and freedom of information can be misused. Even if constitutions proclaim freedom of information, the measure of the population's actual ability freely to inform themselves and others stands in an exactly opposite relation to the possibilities for information which the owners of the mass media have acquired and use to form others' opinions. Freedom of opinion and of the press—which constitutes freedom of information—are necessary elements of the right to a good education, i.e. the right of the individual to acquire the intellectual abilities to help to shape the economic and political processes in society.

619. Furthermore, freedom of information, as well as cultural co-operation, between the nations is an essential element for peaceful coexistence. It enriches the various nationalities and rounds off the human personality. From this viewpoint, freedom of information is not only a national, but also an international problem. In the same way, freedom of information is not absolute in itself. It may not be interpreted as permission to spread true or false, useful or damaging information, and the content of exported and imported information must also correspond to the general international principles of peaceful coexistence between countries with differing social systems. Therefore, one of the essential elements of free information is that those States interested in it must place a legal ban on the spread of national and racial hatred, on war and militarist propaganda, and on crime and immorality, no matter which of the media try to propagate them. To a reasonable interpretation of freedom of information belongs the right to a reply and the duty of those who publish false information to correct it. And any State with a responsible attitude to information must also take suitable measures to prevent the importation of information which counteracts the policy of peaceful coexistence.

620. The fact that the State has clear positive responsibilities in matters of cultural rights is generally recognized today. For a long time, cultural life was regarded as a preponderantly private matter. While, of course, individuals, groups and communities have primary roles in the development of their own culture, it has been recognized that at least some form of financial assistance is needed from the local, regional and national authorities in order, to maintain adequate improvement in economic and social conditions and the rate of technical development which will make it possible for everyone, without discrimination, to take part in the cultural life of his community and that of the nation at large. It is realized that the administrative structures of a country's cultural affairs will necessarily reflect the general structures and mentality of that country's

administration. The fundamental ideology, the socio-economic system and the technical development of the country concerned will necessarily shape its cultural policy and the degree and extent of direct government involvement in general cultural policy planning and its implementation. Even those countries that are cautious about centralization, and about the predominant role of the State in the direct management of cultural institutions, agree that the State should at least give financial assistance to cultural activities. It has become clear that cultural policy cannot be confined to the "patronage" type of measure, even on a very large scale, and that it should consist of a body of operational principles, administrative and budgetary practices and procedures which would provide a basis for cultural action by the State and be linked with both a policy of continuing education and a policy of decentralization and regional and local development. Cultural policy should be closely co-ordinated with the social and economic development of the nation.

621. The need for socio-economic and cultural development to go hand in hand has been stated as follows by the participants in the Round Table on Cultural Policies in the Modern World, which was organized by UNESCO and took place in Monaco from 18 to 22 December 1967:

It was recognized that economic and social development should go hand in hand with cultural development; culture has a beneficial effect on the means of production available and on man himself; every improvement in physical well-being helps to promote culture, by freeing man from enslavement to physical obligations, and by giving him leisure for the activities of the mind. The march of economic progress is generally reflected in the cultural sphere, and cultural activity stimulates economic life. Emphasis was placed on the need to integrate science in culture, and to study the way in which culture evolves under influence of science and technology. Attention was also drawn to the fact that literacy programmes and cultural development form an indivisible whole: it is the cultural advancement of the whole people that imparts force to the literacy movement.

Over the last twenty years or so, and more especially since 1960, an increasing number of governments have set up departments of cultural affairs distinct from their departments of education. This trend reflects on the one hand, a new phenomenon—sometimes referred to as 'cultural development'—connected with improvements in school enrolments, communication media, town planning and living standards and, on the other, the determination of governments to take deliberate measures, on a national scale, to meet this new demand.¹⁶³

622. Participants in the United Nations Seminar on the promotion and protection of the human rights of national, ethnic and other minorities, held in 1974 at Ohrid, Yugoslavia, insisted on the same general line of ideas, although also recognizing some of the differences existing in this respect between "developed" and "developing" countries. It is deemed useful to quote the following paragraph:

Several participants emphasized that economic and social development represented the essential basis on which the promotion and protection of the human rights of minorities were possible. The situation of a minority depended primarily on its members' standard of living as defined in article 25 of the Universal Declaration of Human Rights, according to which everyone had the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care, and on their enjoyment of the right to education as defined in article 26 of the Universal Declaration. The gap between the levels of economic development of various regions of the world constituted an essential element in the sharp differentiation between the situation of minorities in the advanced industrialized States and

¹⁶³ UNESCO, *Studies and documents on cultural policies, 1, Cultural Policy: a preliminary study*, p. 8.

that of minorities in the developing countries. The promotion and protection of the latter could not be realized so long as various groups, because of their economic, social and cultural under-development, could not enjoy even elementary human rights, such as the right to work or the right to culture. It was pointed out that the highest priority had therefore to be given to the economic and social development of those countries. The achievement of the necessary progress in that direction was a prerequisite for the promotion of the rights of minorities in the developing countries. It was further stated that it would, therefore, be a mistake to apply general concepts with respect to the rights of minorities without specifically relating them to the over-all economic and social environment. One participant referred to the need for special economic aid to under-developed regions of a country where minorities lived, in order to build the economic foundation for the promotion and protection of their rights.¹⁶⁴

C. The impact of recent scientific and technological developments on cultural development

623. Scientific and technological progress has become one of the most important factors in the development of human society, but, while scientific and technological development provide ever-increasing opportunities to better the conditions of life of peoples and nations, in a number of instances they can give rise to social problems, as well as threaten the human rights and fundamental freedoms of the individual. Scientific and technological achievements can be used to intensify the arms race, suppress national liberation movements and deprive individuals and peoples of their human rights and fundamental freedoms and can entail dangers for human rights and human dignity. At the same time, scientific and technological developments can be used for the welfare of man and the present and possible future harmful consequences of certain scientific and technological achievements can be neutralized. Scientific and technological progress is also of great importance in accelerating the social and economic development of developing countries.

624. All States should take measures to extend the benefits of science and technology to all strata of the population and to protect them, both socially and materially, from possible harmful effects of the misuse of scientific and technological developments and should take effective measures, including legislative measures, to prevent the utilization of scientific and technological achievements to the detriment of human rights and fundamental freedoms and the dignity of the human person.

625. Modern science and technology are recognized as having rendered possible vast suffering and perhaps even the annihilation of the human race through the destructive power of modern weapons. This poses a threat to all human rights. It may cause the death of non-combatants and suffering which may last many years, and may even cause physical harm to unborn children by contaminating their future parents. The reference to harm to unborn children concerns atomic weapons in particular. Apart from the possible use of such weapons in warfare, atomic radiation poses hazards to mankind.

626. Armaments have political and social effects. It is impossible here to go into the detailed political and military motivations of armaments; however, it is necessary to go into the social background. The influence of the arms race on economic development, on the social and cultural condi-

tions of the people and thus also on the level and implementation of human rights has been comprehensively evaluated in the last few years only. At present, when mass unemployment exists in most countries, many people are asking about the effects of disarmament on the number of employed. So far, sufficient concrete historical experience of what happens in the social field as a result of consistent disarmament is lacking. The mass reduction of the standing army which took place in the United States of America in 1945 and 1953 and in the Soviet Union in 1945 and 1959 show that it is certainly possible to reintegrate millions of soldiers in the labour force without creating economic difficulties.

627. The existing arms race seriously affects both social systems. In the developing countries, it also gives rise to a conflict between the aim of encouraging human existence and the national welfare and the possibilities of making that aim a reality; the framework for this conflict is determined by the course taken by each State. The potentialities in human labour, money and material resources to be set free by disarmament, can and must be used for social and cultural advancement. Defence expenditure is a burden on the economy and reduces the speed at which society can implement economic, social and cultural human rights. The arms race does not arise from the direct influence of scientific and technological progress on the system of military defence. The political conceptions remain decisive. The "cold war" has ended, and it is particularly in Europe, where so far the danger to world peace has been the greatest, that détente has taken the largest steps forward. Now that political détente has been achieved, it must also be made the starting point for military détente, which should culminate in broad co-operation between countries with differing social systems in the economic, scientific, technical and cultural fields for the mutual benefit of all.

628. Thus, disarmament improves the conditions for the implementation of human rights, although the relationship between armaments and human rights is not direct, but determined through the social system.

629. Serious efforts are needed to make use of these possibilities, particularly in the struggle for socio-economic rights. Even in conditions of peace, the social and political effects of the production of armaments endanger the implementation of human rights. But armaments have another aspect, namely that of their application in war. Regionally, war is already a reality and it is definitely not impossible on a global scale. Aggressive policies and the greater efficiency of weapon systems have led to a far larger number of people being killed in wars. After the Second World War, this horrifying tendency accelerated; an incalculable number of civilians have become victims of military conflicts. Four fifths of the world's population were involved in the fighting from 1939 to 1945. In the battles since 1945, this tendency has become the dominating factor; far more civilians have been killed than combatants. During recent decades, we have been witnesses of the ongoing struggle to limit or end the arms race, for effective steps towards disarmament, with the aim of general and complete disarmament. The highest priority in this struggle is being given to banning nuclear weapons and other means of mass destruction altogether from the arsenals of the world.

630. The concept of weapons of mass destruction is comparatively new. It arose after the Second World War,

¹⁶⁴ United Nations Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities, Ohrid, Yugoslavia, 25 June-8 July 1974 (ST/TAO/HR/49), para. 28.

together with the application of the latest scientific findings to the development of arms. These new findings increased the destructive power of modern weapons to an extent which exceeds the boundaries of human imagination. Science knows no stagnation — not even in the development of new techniques for destruction. This fact endows the proposals made at the thirtieth and thirty-first sessions of the General Assembly to ban the development and production of new types of weapons of mass destruction and of new systems of such weapons with the greatest importance. The proposed ban would stop the latest scientific and technical achievements from being used to produce weapons and weapon systems of mass destruction. It brings the relationship of technological progress and new arms techniques into the only form acceptable for mankind: scientific and technological progress should be used solely for the benefit of the human being in raising economic, social and cultural standards, and must not be misused for the destruction of mankind. A number of treaties aimed at prohibiting the development and use of weapons of mass destruction are described in the Secretary-General's report entitled "Protection of broad sectors of the population against social and material inequalities, as well as other harmful effects which might arise from the use of scientific and technological developments".¹⁶⁵ The Antarctic Treaty of 1959¹⁶⁶ prohibited the testing of any type of weapons, any nuclear explosions and the disposal of radioactive waste on the southern Continent. The threat of world-wide radioactive contamination from atomic-bomb testing led to the signing, in Moscow on 5 August 1963, of the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water.¹⁶⁷ This was followed by the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), done at Mexico, Federal District, on 14 February 1967,¹⁶⁸ which was signed by 21 Latin American countries. The Contracting Parties undertook, among other obligations, to prohibit and prevent in their respective territories (a) the testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, directly or indirectly, and (b) the receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly. The Treaty on the Non-Proliferation of Nuclear Weapons,¹⁶⁹ of 1 July 1968, and the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and the Subsoil Thereof,¹⁷⁰ of 11 February 1971, contained important provisions aimed at the prevention of the spread of nuclear weapons. To the aforementioned treaties should be added the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction,¹⁷¹ of 1972 whereby the signatories undertake not to develop, produce, stockpile or otherwise acquire or retain microbial or other biological agents or toxins except for specific peaceful purposes, or weapons, equipment or means of delivery designed to use such agents

or toxins for hostile purposes or in armed conflict. The General Assembly adopted resolution 2936 (XXVII) on 29 November 1972 declaring on behalf of Member States their renunciation of the use or threat of force and the permanent prohibition of the use of nuclear weapons; it also recommended that the Security Council should take appropriate measures for the full implementation of that declaration. Throughout the whole of recorded history, arms races have led to war. Never previously has the world seen an arms race on the scale of the present one. Never previously have the likely consequences of full-scale war been so terrible. These are the problems, and there is no doubt that their magnitude is directly related to the development of science and technology and its application.

631. In its resolution 3226 (XXIX) of 12 November 1974 and in many previous resolutions, the General Assembly has expressed its concern about "the potentially harmful effects on present and future generations resulting from the levels of radiation to which man is exposed". The hazards of atomic radiation interfere with human rights on an international scale. As the number of nuclear power plants depending upon fission increases throughout the world, the problem is what to do with accumulating high-level radioactive wastes. Very little effective work has been done to solve the problem of waste disposal in a way that will not potentially contaminate the seas and the oceans, as well as the local areas of a country. If wastes accumulate and they are not properly guarded, they will spread and cause harm to other peoples. Furthermore, safety measures in nuclear power plants continually improve, so that the possibility of a nuclear accident involving the widespread dispersal of radioactive gases from an accident at a nuclear plant is reduced to a very small risk. For every accident that has ever occurred at a nuclear power plant in operation, however, there have been dozens of accidents in the transportation of fuels to plants or of wastes from plants, or due to leakages that develop in the storage of highly radioactive materials. It is difficult to confine these risks within the bounds of a single nation.

632. A report on respect for the integrity of nations in the light of advances in recording and other techniques has been produced by the Secretary-General. During the discussion in the Third Committee of the General Assembly on the question of whether such a study should be made, some representatives pointed out that the new nations

recognized the dangers to which contemporary science could expose their culture and they wanted to retain their traditional values, and that the uncontrolled use of the new devices and techniques to which progress gave rise was 'a specially serious threat for developing countries, which were defenceless against them'.¹⁷²

In the Secretary-General's report, particular attention was paid in this connexion to the implications of the development of observation satellites and communications satellites, including the possible effects of future direct broadcasting by satellite.

633. The deterioration of the human environment due to scientific and technological developments has been a by-product, until recently generally regarded as inevitable, of the interference with the environment which was necessary for the realization of the right of everyone to "a standard of living adequate for the health and well-being of

¹⁶⁵ A/10146.

¹⁶⁶ United Nations, *Treaty Series*, vol. 402, p. 71.

¹⁶⁷ *Ibid.*, vol. 480, p. 43.

¹⁶⁸ *Ibid.*, vol. 634, p. 281.

¹⁶⁹ *Ibid.*, vol. 729, p. 161.

¹⁷⁰ General Assembly, resolution 2660 (XXV), of 7 December 1970, annex.

¹⁷¹ General Assembly resolution 2826 (XXVI), of 16 December 1971, annex.

¹⁷² E/CN.4/1116/Add.3, para. I. For the discussion in the Third Committee, see *Official Records of the General Assembly, Twenty-third session, Third Committee*, 1642nd meeting.

himself and his family", laid down in article 25, paragraph 1, of the Universal Declaration of Human Rights. The threat to human rights of this deterioration is now, however, causing increasing concern in many sectors of society, especially in some of the more populous countries. This problem is the more serious because the harmful environmental by-products of certain technological developments are often unpredictable and because developments are so rapid. The deterioration in the environment is a threat to the right to life, infringes everyone's right to a standard of living adequate for the health and well-being of himself and of his family, and affects adversely the enjoyment of life for millions. The following is a summary of some relevant aspects of the deterioration of the human environment:

(a) A threat to health and even life is posed by the pollution of the air due to industrial activity, traffic, domestic heating and other factors. Nuclear explosions, for whatever purposes, peaceful or otherwise, and experiments with biological and chemical methods of warfare also create hazards to health and life.

(b) Psychological and physical damage and a general deterioration in living comfort are caused by the increase of noise in the urban environment; the causes of this include increased air traffic, supersonic travel with the accompanying supersonic boom, increased street traffic and demolition and construction activities.

(c) A threat to health, to the enjoyment of the amenities of life and to the continued supply of essential raw materials is posed by excessive waste creation and inefficient waste disposal; this includes the dangers arising in connexion with the disposal of the wastes from nuclear power sources;

(d) There are various threats to world food supplies which also entail in some measure an impairment of mankind's more general enjoyment of the amenities of life, including the visual beauty of the landscape. These include erosion and other forms of soil deterioration; water pollution by domestic sewage, industrial wastes, drained-off chemical fertilizers and pesticides, and thermal pollution; other harmful secondary effects of pesticides, other biocides, chemical fertilizers and synthetic detergents; and the increased danger of oil pollution of the seashore due to off-shore oil drilling and the use of larger oil tankers, which do great damage in case of shipwreck. There is the penetration of poisonous substances into food chains.

In addition, FAO writes in its contribution to the present report that technologies applied with seeming impunity by a few, have sometimes become a threat to ecological systems on which man depends when applied widely and without proper controls and consideration of the needs of all. Examples are the lowering of water tables and salt-water incursion into fresh water aquifers from uncontrolled exploitation of ground-water; and the creation of uncontrolled watering points in semi-arid areas leading to permanent deterioration of grazing lands from over-use.

634. Some of these hazards affect in some measure the whole of humanity. Others are essentially problems of urban living. Increasing population and accelerating urbanization exacerbate many of the dangers referred to. In addition, attention has been drawn to the individual's possible loss of identity in huge cities and conurbations and to the threats to his psychological stability due to overcrowding there. Ecological problems can be overcome by measures

which can be taken only within the framework of peaceful coexistence, through international co-operation on a basis of equality, the exchange of scientific and technical experience and co-ordinated activities which are binding for the respective partners. The world community, concerned in recent years with environmental problems, is gradually becoming conscious of its responsibility. Proposals have been made for the prohibition of action which influences the environment and climate for military and other purposes incompatible with the maintenance of international security, human well-being and health.

635. The world is witnessing an explosive increase in population that is giving rise to increasing problems in relation to the adequacy of food supplies, living and economic resources in general, and of educational and social services. According to some specialists, the overcrowding in cities, which is in part a result of the population explosion, is causing an increase in psychological disorders. The problems created by the population explosion are a by-product of the wider enjoyment of health, and the resulting decline in the death rate of people below the age of procreation.

636. Great advances have occurred in developing countries through scientific and technological advances in health, nutrition, education and industrialization. However, not all these developments have positive effects and some in fact have a detrimental impact on developing countries and only certain economically more advanced countries are gaining the full advantages of scientific and technological progress. This is partly owing to the slow transfer of technology and the hesitation of some countries in applying these advances, as well as to differences in cultures, traditions, economies and other factors. These developments have effects on the right to work, on the human environment and other rights, for example, on the right to clothing, when new developments have lowered the price of clothing and introduced new materials but new dangers from flammability have also been discovered. The right to food is affected by new techniques which often lead to over-exploitation and waste of food resources, such as new methods of catching fish, whereby small species which are not edible are caught and killed. The depletion of fishery resources through these techniques gives cause for concern. Positive scientific and technological developments are going on, particularly in the field of agriculture. Beneficial developments can also be seen in the field of power and energy, promoting man's right to work, to welfare and to rest and leisure. But they also can be accompanied by disadvantages.

637. Scientific and technological developments have made the world smaller and have greatly increased the interdependence of the various regions of the world. The spread of modern technology is taking place almost automatically; however, the need for the accelerated and purposeful bilateral or multilateral transfer of science and technology is great.

638. Scientific and technological developments must be considered as part of a broad evolutionary process; yet the possibility of by-passing the industrial stage and proceeding directly to the computer stage must be studied. The developing countries feel strongly that their societies ought not to remain at a primitive stage of evolution but should benefit from scientific and technological progress. Very often, technology is being transferred to developing countries without local needs and customs being sufficiently taken into account, thereby producing undesirable effects and making

those countries dependent on the developed world. This can be considered as a new form of imperialism, continuing the dependency of the poorer countries on those more privileged. The developing countries are receiving too little of the technology needed to accelerate their economic growth and the gap between the developed and developing world is growing wider. The "brain drain" deprives the developing world of many much-needed scientists, doctors, engineers, etc. Statistics show that 97 per cent of all scientific workers are already in the developed world. Many of the ill effects of pollution fall on those least able to ward off its adverse consequences, while the benefits of industrial development are mainly reaped by the industrialized countries. The sites chosen for atmospheric atomic testing are usually in undeveloped parts of the world, far from the populations of the countries which make the bomb. Modern fishing gear permits the fleets of technologically advanced countries to exploit the natural resources adjacent to developing countries and to pollute the seas. The local pollution of the environment in developing countries is often caused by foreign corporations that exploit local resources. Industrialization is essential for the welfare of developing nations, but the destruction of the environment should be minimized, so as to preserve its natural beauty and resources. Careful industrial environmental planning is therefore necessary to avoid adverse consequences. The use of sophisticated weaponry by aggressive Powers and against liberation movements should be condemned. Weapons of mass destruction, biochemical warfare, napalm, and other newly invented indiscriminate methods for maiming or killing innocent civilians should be outlawed. Freedom of scientific research should not be deemed to permit experimentation on entire groups of people. Even elementary human rights of peoples and nations are still rigorously denied and violated in many parts of the world, as in the occupied territories of some countries, in others still subject to colonial régimes, and in still others where savage wars are launched against their peoples. Such mass destruction, the misuse of scientific and technological developments, even results in driving national inhabitants from their own homelands, turning them into a nation of refugees, subjected to all kinds of material and moral suffering, in contravention of the resolutions of the United Nations. Human rights should be protected against such types of aggression and modern science and technology must be oriented towards promoting peace, justice and welfare for these peoples and nations. The protection of national sovereignty against harassment and discrimination must be ensured. While the rapid spread of inexpensive transistor radios greatly facilitates education and the rapid spread of information, it also makes possible the reception of foreign broadcasts which might contain falsehoods, distortions, propaganda, and even racist matter. Satellite communication, including direct television broadcasts should be internationally regulated, in order to ensure better understanding between peoples, an expansion of educational and cultural programmes and the promotion of human rights.

639. One of the primary concerns of developing countries is the question of the prices they receive for commodities, which are controlled by developed countries. The greater use of synthetics might further lower the selling potential of their natural products. Moreover, the competitive position of industries in developing countries has been difficult to maintain, because the new technology necessary is costly. The concentration of economic power in large multinational corporations is a phenomenon that particular-

ly affects the developing countries. The less developed countries need the capital and technological processes these corporations can bring, but they are very difficult to control because of their size and nature. In several technological fields, certain companies have a virtual monopoly of a particular product.

640. At the same time, a very important phenomenon can now be observed — the democratization of culture. Writing in 1973, the Director-General of UNESCO stated the following in this connexion:

35. [...] when the individual is de-personalized by the scientific and technological rationalization of labour and by the standardization of living conditions, culture offers each of us the means of recovering his identity and his capacity for creation and expression. When the new media of mass communication subject the individual to a stream of undifferentiated information and turn him into a passive spectator, culture offers each of us the means of finding his own place in the world, appreciating what is happening, and reacting. When the pressure to consume turns the individual into a conditioned being, culture offers each of us the means of choosing, of refusing any form of subjection, of preferring reflection to reflexes. When urbanization cuts off the individual from his roots and traditions, culture means being able to re-establish links with his own particular inheritance, while gaining access to the cultural heritage of all mankind. Lastly, when man asks himself what he is doing on earth, culture can give him guidance in seeking a reply.

36. From this standpoint, there is no longer any room for an élitist conception of culture. Just as culture cannot be reduced to moments of delight, it cannot be the prerogative of a privileged minority.

[...]

39. Democratization of culture is a corollary, or rather a primary aspect, of the concept of cultural development. Such development is in fact based on recognition of the right to participate in cultural life as a basic human right, and its sole purpose is to promote and facilitate the effective exercise of this right in the most propitious conditions. This right was first set forth in Article 27 of the Universal Declaration of Human Rights.

[...]

41. As soon as access to cultural life or, better still, participating therein, is recognized as a human right to which every member of an organized community can lay claim, it necessarily follows that the authorities of the community are in duty bound to do all they can to create conditions conducive to the effective exercise of that right. The promotion of the nation's cultural life is thus one of the functions of a modern State [...]. Governments confronted with problems of justice — that is of the satisfaction of human rights — which are at the same time mass problems, involving consideration of resources and organization on an enormous scale, must have a cultural policy in the same way as they have an economic policy, a social policy, a fiscal policy, an education policy, science policy, etc.¹⁷³

D. Cultural development and cultural rights

641. Self-determination is a prerequisite and a precondition for the implementation and preservation of all other human rights and fundamental freedoms, including the right to cultural life. As has been stated above, culture is one of the most important elements of social life and its organization and free development can contribute in a decisive manner to the assurance of self-determination itself. The feeling of cultural community is probably one of the most essential characteristics of nations and peoples.

642. Human rights in the field of culture are contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights.

¹⁷³ See A/9227, paras. 35, 36, 39 and 41.

643. The Universal Declaration of Human Rights contains express references to culture in the following articles:

Article 22

Everyone, as a member of society, has the right to [...] realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community [...].

Article 27 of the Declaration also deals in paragraph (1) with the right to "share in scientific advancement and its benefits".

644. The International Covenant on Economic, Social and Cultural Rights likewise contains some express references to culture, in the following terms:

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

[...]

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

This provision includes, in paragraph 1(b), the right of everyone to "enjoy the benefits of scientific progress and its applications".

645. The International Covenant on Civil and Political Rights contains the following provision:

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.

646. Other provisions concerning culture appear in the texts of international conventions, agreements and declarations. The International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX), of 21 December 1965) contains the following provision:

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

647. Article 4 of the UNESCO Convention against Discrimination in Education, adopted on 14 December 1960 by

the General Conference of the United Nations Educational, Scientific and Cultural Organization provides that:

Article 4

The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

(a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;

(b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;

(d) To provide training for the teaching profession without discrimination.¹⁷⁴

648. The ILO Convention (No. 107) on Indigenous and Tribal Populations, 1957, adopted by the General Conference of the International Labour Organisation on 26 June 1957, provides that:

Article 2

1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

2. Such action shall include measures for:

(a) Enabling the said populations to benefit on an equal footing from the rights and opportunities which national laws or regulations grant to the other elements of the population;

(b) Promoting the social, economic and cultural development of these populations and raising their standard of living;

(c) Creating possibilities of national integration to the exclusion of measures tending towards the artificial assimilation of these populations.

3. The primary objective of all such action shall be the fostering of individual dignity, and the advancement of individual usefulness and initiative.

4. Recourse to force or coercion as a means of promoting the integration of these populations in the national community shall be excluded.

[...]

Article 4

In applying the provisions of this Convention relating to the integration of the populations concerned,

(a) due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations, and of the nature of the problems which face them both as groups and as individuals when they undergo social and economic change;

(b) the danger involved in disrupting the values and institutions of the said populations unless they can be replaced by appropriate substitutes which the groups concerned are willing to accept shall be recognized;

(c) policies aimed at mitigating the difficulties experienced by these populations in adjusting themselves to new conditions of life and work shall be adopted.

[...]

¹⁷⁴ United Nations, *Treaty Series*, vol. 429, p. 94.

1. In defining the rights and duties of the populations concerned regard shall be had to their customary laws.

2. These populations shall be allowed to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes.

3. The application of the preceding paragraphs of this Article shall not prevent members of these populations from exercising, according to their individual capacity, the rights granted to all citizens and from assuming the corresponding duties.

Article 8

To the extent consistent with the interests of the national community and with the national legal system:

(a) the methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations;

(b) where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be borne in mind by the authorities and courts dealing with such cases.

[...]

Article 10

[...]

2. In imposing penalties laid down by general law on members of these populations, account shall be taken of the degree of cultural development of the populations concerned.

3. Preference shall be given to methods of rehabilitation rather than confinement in prison.¹⁷⁵

649. The concept of "cultural rights" is relatively new. In the past culture was taken for granted, and was frequently discussed within the framework of individual political rights, religious liberty or freedom of opinion and expression. Preoccupation with political rights was followed by the recognition of "economic rights", and the concept of "cultural rights" has followed these rights.

650. The present interest and concern over "cultural rights" have many roots, including the increasing industrialization and mechanization of the world. Thus, the need emerged to match the technological achievements of today's world with cultural achievements. At the same time, for countries which have recently won independence, this phenomenon has also involved a new sense of dignity, a new search for the ideas handed down from the past, pride in art forms and the determination to rebuild the traditional cultures so often disparaged in recent centuries, or to protect new indigenous cultures from the onslaught of urbanization and industrialization. These increased, at the same time, the interest in other cultures and in the rich cultural past that lies beyond present-day man. But the most important is the fact that "culture" is no longer considered as a prerogative of the few or the élite; there is a recognition of the diversity of cultural values, artefacts and forms.

651. The right to culture is the right to self-expression through participation in genuine creative activity.

652. By cultural rights, one should understand the rights of a human being to labour and to education, to the free and all-round development of his or her personality, to an active participation in creating material and spiritual values and using them for the further progress of modern civilization. These values also include scientific, natural, social, medical, and other values since they form an integral part of culture.

¹⁷⁵ ILO, *Conventions and Recommendations, 1919-1966*, Geneva, International Labour Office, 1966, pp. 902-904.

653. The right of every individual to culture is to be understood as implying that he or she has the right of access to knowledge, to the arts and literature of all peoples, the right to take part in scientific advancement and to enjoy its benefits, and to make his contribution towards the enrichment of cultural life. This assumes that the individual has attained a standard of living adequate for the health and well-being of himself and of his family, including the provision of food, clothing, housing and medical care, as provided in article 25 of the Universal Declaration on Human Rights; for, if he has not reached this standard because he is undernourished or even starving, because he has no decent lodging or lacks the possibility of receiving the most elementary medical attention, it is evident that he will have neither the desire nor the possibility of taking part in the cultural life of his community and there can be no question of his enjoying the arts and literature, still less of participating in scientific advancement; in other words, a minimum of material well-being is necessary if the very notion of culture is to have the least significance. On the other hand, there is no right to culture without a minimum of education, and a large part of humanity remains illiterate.

654. For the developing countries, the content of cultural rights is closely linked with the political right of self-determination, with the quest for an indigenous culture as a means of liberation and rebirth, a new meaning for national dignity. For these countries, cultural rights mean, first of all, development, practical education.

655. Each member of society should be able to enjoy the benefits of cultural achievements; each member of society should be a culture user and a culture bearer, since it is the masses themselves which make culture; it is necessary that the social division of labour be removed and that alienation, poverty, ignorance etc., be overcome. Humanity has reached a point in history when the elimination of such deterrents to cultural rights is possible. Another essential condition, if all men are to benefit from cultural rights, is to eradicate war from the life of society.

656. Cultural rights are human rights to labour and education, to the free and all-round development of the personality, to an active participation in creating material and spiritual values and in using them for the further progress of modern civilization. The advancement of science and technology is an extremely complex problem. It improves the life of human beings in many spheres and thus promotes the realization of human rights. If applied without planning or built-in safeguards, however, science and technology could lead to the violation of human rights in other spheres of life. For instance, the development of computers creates better working conditions and facilitates education and research, yet it could infringe on the individual's right to privacy. Also, while the erection of power plants and factories creates greater employment opportunities, it could impair nature and the environment and thus infringe upon the right to rest and leisure. Scientific and technological developments could benefit certain human rights, yet impair these rights and others. For instance, modern technology might make work physically easier, yet add to the current level of noise and air pollution. It must be stated that the use of modern science and technology to promote economic, social and cultural rights, including the right to health, food and housing, is of primary importance, in spite of the threat to the right to work posed by automation. Although in the developing societies the concern to preserve

respect for privacy is felt as strongly as in the industrialized societies, the need for specific local laws dealing with scientific and technological developments has not yet been felt with such urgency. Until the basic rights to food, work and shelter have been satisfied, there ought to be a more careful use of resources by developing countries involving sophisticated technology. Science in general is a positive force in society for increasing production and improving the conditions of life of the citizens. At the same time, there is the new phenomenon of the large multinational corporations, which often pollute the air and water and disrupt the economic and social fabric of developing countries.

657. Contemporary scientific and technological progress has a very great influence on all aspects of social life in all societies. Advances in science and technology create vast opportunities for the development of the economy and culture of various countries, the improvement of the material welfare of peoples and the consolidation of peace, friendship and co-operation between peoples and States. Yet it would be a great mistake to view scientific and technological progress, in the abstract or collectively, without taking account of the existence in the modern world of different social and political systems, or to disregard the major differences in the social consequences of the scientific and technological revolution in different countries. Scientific and technological progress could, of course, have negative effects too, but science itself and peoples, are able to cope with them. There are therefore no grounds for pessimism, panic or fear. Although the problems now arising from technological advance are the same in kind wherever they occur, they no doubt differ in degree. Solutions adopted might well differ according to the political, economic and social system, and in some systems a given solution might be more readily accepted than in others.

658. The fact is that each of the classical human rights is now placed in a completely new historical situation, so that it becomes necessary to frame a new and comprehensive series of laws. This appears to be a natural consequence arising from the fact that the scientific and technological revolution affects every sphere of life on the one hand, and that human rights are basic rights on the other, so that their constitutional validity can be tested by the concrete laws that are passed as a result of the abstract demands arising from the Constitution.

659. Concerning the right to work, even if one cannot support the opinion that there exists a hierarchy of human rights—human rights are indivisible, as is aptly stated in the Proclamation of Teheran¹⁷⁶ of the 1968 International Conference on Human Rights—it should be recalled that the rights which regulate people's working and living conditions are those which directly affect the development of an individual's personality; for it is in the process of work that a human being develops his essential characteristics.

660. And this personality-forming function of labour is determined by the social quality contained in labour. Therefore, special attention needs to be paid to developing further the right to work, a demand which was taken up in article 23 of the Universal Declaration of Human Rights in 1948 and in article 6 of the International Covenant on Economic, Social and Cultural Rights.

¹⁷⁶ *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968* (United Nations publication, Sales No. E.68.XIV.2), p. 4, Proclamation of Teheran, para. 13.

661. There is a whole series of problems: (a) There is a contradiction between the growing complication of work in certain professions and the simplification and even a return to primitive methods, in others; (b) Through mechanization, and even more so through automation, much labour capacity is set free; (c) Many workers must continually extend or even completely change their skills and abilities; (d) Industrial investments affect social processes to an unprecedented extent; (e) The concentration of economic power in the hands of international monopolies has ideological and political consequences.

662. However, the scientific and technological revolution not only affects social and cultural relations, but is, in turn, also shaped by them, i.e. it is itself a basic social process, which can take different forms. Science and technology should be subordinated not to profit aims but to the needs of society. Thus, they should be systematically directed towards raising the living standards of the producers and serve to develop personality, help to develop the creative character of labour, to level out the main differences between conditions in the city and in rural areas, between mental and physical labour, to limit heavy physical and monotonous work in order to create the material prerequisites under which labour, through which man fashions himself, can become his main need.

663. All the steps taken on this long and wearisome road are not the automatic consequences of scientific and technological progress. There are no automatic solutions to social problems arising out of production techniques. Experience confirms that technical progress can make a lasting contribution to social progress only if it is consciously used by society to carry out systematically the tasks to be preferred. However, only when democracy is also extended to the economy will science and technology play a genuine social role.

664. National self-determination and individual self-realization determine one another; wherever the vast majority of the people are excluded from control over social wealth, most individuals cannot find the conditions for the full development of their individuality.

665. An inestimable contribution to labour democracy would be made if at least the following were guaranteed within the framework of the principle of the right to work:

(a) Even before any investments based on technical changes are made, the social effects should be examined in co-operation with the workers, and measures taken to protect them from dismissal, disqualification or other adverse consequences;

(b) Workers who lose their jobs as a result of structural or technical changes should be re-trained while receiving full wages and then offered suitable work (the right to re-training);

(c) Additional protection from unemployment should be provided for workers who have reached a certain age;

(d) The greater financial gain achieved through higher labour productivity arising out of technical progress should be used to pay for measures of social progress;

(e) There should be free and additional health protection for workers dealing with substances or working under conditions which are injurious to health;

(f) Men and women, young persons and adults, must be paid the same wages for the same work;

(g) Suitable working and health regulations must be worked out and checked before new technologies and methods are introduced.

666. Concerning the right to health, occupational diseases and mental disorders caused by the urban environment are examples of threats to the right to health posed by new technological developments. Science is continuously discovering the harmful effect which certain activities have on the health of man. Some questions have been raised by organ transplantation, including the definition of death, attitudes to which were changing in the light of the possibility of maintaining heart and lung functioning after the cessation of brain activity. The subjects of artificial fertilization, abortion, the production of children in test tubes, compulsory sterilization and mutation of germinal cells are also of importance. The dangers of air pollution are also often referred to in the context of the right to health.

667. Concerning the right to food, many countries nowadays have difficulties in meeting food shortages, in spite of improved agricultural practices, including the availability of improved seeds, synthetic fertilizers, pesticides and fungicides and better water and soil management. Certain pesticides and fungicides are, however, recognized as being ecologically disruptive. It is recognized that, in order to improve methods of production, conservation and distribution of food, it is necessary in many countries to develop or reform the agrarian structure. The improvement of practices in the international trade in agricultural products is also deemed important.

668. As far as the right to education is concerned, there is a need for continuous education and even frequent retraining in the present era of rapid technological advances, and the demands on teachers are particularly great. Education must be democratic and advanced in outlook, and at the same time freedom of research and of artistic creation should be safeguarded. Modern audio-visual aids, radio and television can make important contributions to education, especially in rural areas. But pictures and sound have to be augmented by high-quality commentary in order to produce desirable results. Computers are now playing an important part in the social sciences. One known phenomenon is now the cultural misrepresentation and interference against developing countries manifested in certain types of advertising and commercial films and television shows. Violence portrayed on television has been shown to lead to anti-social behaviour in some children, who are unable fully to distinguish fact from fantasy, or whose behaviour is otherwise susceptible to being influenced through television viewing. Museums and libraries should be kept open free of charge in the evening and at weekends for the benefit of all. Great technological advances should be used so as to contribute to progress in education and culture in developing countries.

669. Concerning the right to rest and leisure, in most countries of the world, new facilities are being made available for citizens to enjoy the outdoor life and to take up sports, to rest and to pursue cultural activities. As the need for long hours of work declines, this sphere of human activity is becoming more important. There are many labour-saving devices in the house to reduce the time necessary for household chores. Furthermore, improved transportation makes access to places of rest and recreation increasingly possible. Recreational equipment is mass-produced and

increasingly available. The destruction of the environment and the stresses caused by industrialization and urbanization are threats to the right to rest and leisure and better city planning is suggested to reverse these adverse trends. At the same time, however, a certain social alienation is associated with the new technological age. The better planning of man's social needs is suggested so that man might be able to fulfil himself creatively during his non-working hours. Leisure is one of the social factors whose role is gradually expanding in the modern world; it can be defined as that part of his time at the free disposal of man, which can be used for rest, entertainment and the development of personality. In modern societies, this time-span has been gradually and systematically widened as a result of the development of technology, increases in productivity and progress in the organization of work. In the analysis of the role of leisure in the development of the human personality, attention should be paid to at least three aspects: (a) the recreation function, (b) the development function, (c) participation in culture.

670. Concerning the right to democratic government, everyone has the right to freedom of opinion and expression and to a democratic form of government. Radio and television and the other information media inform the population of political events. The right to seek, receive and impart information has been promoted by many recent technological developments, especially in the area of the information media. The advent of copying machines, an improved communications network, computers and other modern machines has resulted in better and more efficient public administrators. Many countries have voting machines which permit a prompt and accurate calculation of the results of elections.

671. People have the right to be fully and reliably informed. The free flow of information and opinion must improve understanding between them. States have to combat accordingly all propaganda which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression and which present any danger to the maintenance of friendly relations between peoples and to the preservation of peace, arising from the publication of inaccurate or false reports and the dissemination of such reports by other means. Article 20 of the International Covenant on Civil and Political Rights states:

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

672. There are aspects which makes it necessary to develop laws relevant to human rights. These concern violations—made possible by scientific and technological progress—against personal freedom and health. The following are some of the problems involved:

(a) Protection against the violation of privacy by telephone tapping, by electronic interception and reproduction equipment and other types of secret observation and filming, and the prevention of the use of material obtained thereby in court cases;

(b) Protection against the use of psychic and psychological tests and methods of investigation in penal and civil procedures;

(c) Protection against personnel tests, particularly involving the use of truth drugs, in routine checks in factories or during qualification tests;

(d) The legal consequences of the use of fertility drugs and artificial insemination (decisions on fatherhood, the guardianship of children in cases of divorce, alimony, damages);

(e) Protection against the adverse effects of chemicals used in food, packing and storage and the legal consequences of disturbances of the environment as a whole;

(f) Claims for damages in respect of harm resulting from errors made in feeding computers;

(g) Prohibition and compensation provisions concerning the use of psychotropic substances and genetic manipulation, on the basis of which there even exists a proposal to organize world genetic planning and to establish a genetic aristocracy;

(h) Organ transplants and the legal problems arising therefrom.

673. Human rights, a catalogue of binding constitutional rights acknowledging the essential conditions of development for each individual, also regulate the individual's fundamental position in society, and in particular his relation to the State.

674. As international law is not supra-State law and the United Nations is not a supra-State (it has no sovereignty over territories or individuals, but has an inter-State function), it cannot decree, grant or guarantee any human rights. These can, of course, be the subject of inter-State treaties, but that is something quite different.

675. Even if human rights do not originate in international law and cannot be granted and guaranteed by the United Nations, the United Nations still has important tasks to fulfil in connexion with those rights.

676. These tasks arise from the United Nations function of safeguarding peace. If the interconnexion between safeguarding peace and human rights is ignored, the field of human rights becomes a field of intervention, because the sovereignty of other States is violated on the pretext of defending human rights, this constitutes the violation of the right of nations to self-determination, laid down in many international texts. The General Assembly at its thirtieth

session adopted the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (resolution 3384 (XXX) of 10 November 1975). In this Declaration, the Assembly, *inter alia*, reaffirmed the right of peoples to self-determination and the need to respect human rights and freedoms and the dignity of the human person in conditions of scientific and technological progress, and proclaimed that all States should promote international co-operation to ensure that the results of scientific and technological development were used in the interests of strengthening international peace and security, freedom and independence, and also for the purpose of the economic and social development of peoples and the realization of human rights and freedoms in accordance with the Charter of the United Nations, and should refrain from any acts involving the use of scientific and technological achievements for the purposes of violating the sovereignty and territorial integrity of other States, interfering in their internal affairs, waging aggressive wars, suppressing national liberation movements or pursuing a policy of racial discrimination. Such acts are not only a flagrant violation of the Charter of the United Nations and of the principles of international law, but constitute an inadmissible distortion of the purposes that should guide scientific and technological developments for the benefit of mankind.

677. The important aspects of the "Study of the rights of persons belonging to ethnic, religious or linguistic minorities" and the "Study of the Problem of Discrimination against Indigenous Populations" are dealt with in an admirable manner in special studies prepared respectively by Mr. Capotorti¹⁷⁷ and Mr. Martínez Cobo,¹⁷⁸ Special Rapporteurs.

678. Concluding this part of the present report, the close link between the rights of peoples to cultural development on the one hand, and the cultural rights of individuals on the other, should be reiterated and stressed, this interrelation being of the utmost importance not only for the promotion of the culture of peoples, but also for the strengthening and development of international understanding and peace.

¹⁷⁷ See foot-note 94 above.

¹⁷⁸ See foot-note 100 above.

Chapter VIII

CONCLUSIONS

679. The historical and current development of the right to self-determination shows that it has become one of the most important and dynamic concepts in contemporary international life and that it exercises a profound influence on the political, legal, economic, social and cultural planes, in the matter of fundamental human rights and on the life and fate of peoples and of individuals.

680. The proclamation in the Charter of the United Nations of the principle of equal rights and self-determination of peoples as one of the bases for friendly relations and co-operation among States constitutes a development of historic importance, in terms both of the recognition of that principle as a binding principle of international law and of its further elaboration and impact on various aspects of the life of peoples. The principle of equal rights and self-determination of peoples is a vital feature of the Charter; it is regarded as the basis for the development, on the one hand, of friendly relations among nations and the link between friendly relations and international co-operation and, on the other, of respect for the principle laid down by the provisions of Article 1, paragraph 2, and Article 55 of the Charter. The embodiment of that principle in the Charter of the United Nations is the culmination of a fairly long development. It marks not only the recognition of the concept as a legal principle and a principle of contemporary international law, but also the point of departure of a new process—the increasingly dynamic development of the principle and its legal content, its implementation, and its application to the most varied situation of international life. The importance of this principle is generally recognized, and the far-reaching changes which have occurred since the adoption of the Charter have brought out with ever-increasing force the importance which the principle has gained, on the one hand, from its role in achieving the purposes of the United Nations and, on the other, from its significant position in contemporary international law and in the legal system derived from the Charter of the United Nations.

681. The principle of equal rights and self-determination of peoples is the most important of the principles of international law concerning friendly relations and co-operation among States, and constitutes the basis for the other principles. Thus, the international co-operation which is the fundamental theme of United Nations activities is incompatible with any form of subjection or pressure exerted by the strong against the weak and must be based on the sovereign equality of States and the equal rights and self-determination of peoples. The equal rights and self-determination of peoples has as its corollary sovereign equality, a fundamental principle of the United Nations which is closely bound up with the struggle to achieve equal rights, self-determination and independence and with the strengthening of national sovereignty. Non-intervention, another principle of international law concerning friendly relations and co-oper-

ation among States, should not be used as a cover for violations of self-determination; it should protect States and peoples struggling for their independence, since acts of intervention are violations of the principle of equal rights and self-determination of peoples. Through the principle of non-intervention, the principle of equal rights and self-determination of peoples is linked to the principle of non-resort to the threat or use of force, which protects the political independence and territorial integrity of States; aggression—the use or threat of force—is a violation not only of the principle of the non-use of force but also, and more particularly, of the principle of equal rights and self-determination of peoples. Colonial domination and oppression, the practice of racism and foreign occupation, are clear cases of aggression against the peoples subjected to them.

682. The reaffirmation of the right of peoples to self-determination in the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960) is of great importance, since, from the practical point of view, the principle was to constitute the driving force in the decolonization activities undertaken by the United Nations. The United Nations recognized the passionate yearning for freedom of all dependent peoples and the decisive role of those peoples in the attainment of their independence, expressed its conviction that all peoples had an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and declared that all peoples had the right to self-determination and that, by virtue of that right, they freely determined their political status and freely pursued their economic, social and cultural development. By other special resolutions, the General Assembly has affirmed, *in concreto*, the right of particular peoples to self-determination. Thus the abolition of colonialism and the granting of independence to colonial countries and peoples have played a decisive role in the far-reaching development of the right of subject peoples to national independence and sovereignty. The various rules proclaimed by the United Nations, which define not only the content of the right of those peoples to political self-determination but also the measures to be adopted to that end, amount to a general law of decolonization. The decolonization activities of the United Nations, based on that law, have been of enormous scope and have led to profound changes on the international scene. Those activities must be resolutely pursued, and a determined effort must be made to ensure the full implementation of United Nations resolutions. The affront to human civilization constituted by colonial domination is now approaching its end, and the time when all peoples of the world will enjoy the benefits of independence and freedom is near.

683. Linked with colonial domination are racial discrimination and *apartheid*, which represent an affront to human

conscience and dignity, a total negation of the purposes and principles of the Charter of the United Nations and a crime against humanity, based as they are on doctrines of exclusion on grounds of racial difference or ethnic or religious superiority, all of which are scientifically false, morally reprehensible and socially unjust. The United Nations must ensure the full implementation of the instruments which it has adopted with a view to eliminating these evils, which afflict peoples in a considerable part of the world. Firm support for such implementation from States and the discontinuance of all assistance to the racist régimes are essential to the success of this effort.

684. Universal respect for fundamental human rights and lasting world peace cannot be achieved so long as the unjust conditions recognized in resolutions of the United Nations General Assembly continue to exist and peoples under foreign occupation continue to be prevented from exercising their fundamental right to freedom, independence and self-determination. Accordingly, the United Nations must, as a matter of urgency, make fresh efforts to implement its resolutions concerning the cessation of foreign occupation and the right of peoples still under such occupation to self-determination.

685. The international community must persevere in its endeavours to eliminate all vestiges of colonialism, racism and foreign occupation and make a concerted effort to provide the peoples struggling against those evils with all the moral, political and material support they need. The national movements of peoples fighting for their liberation must be recognized as the authentic representatives of the peoples concerned.

686. The elimination of imperialism, colonialism, aggression, foreign occupation, all forms of discrimination and *apartheid* and threats against national sovereignty and territorial integrity is a prerequisite for the realization of the right of peoples to self-determination and for the social and economic advancement of peoples. The combined force of the movements for national and social liberation, which have shaken the old structures of our rapidly changing world to their very foundations, on the one hand, and the sustained impetus of the scientific and technological revolution, on the other, are paving the way for the full liberation of all mankind.

687. While colonialism, in the traditional sense, is nearing its end, imperialism and the policy of force and *diktat* continue to exist and may persist in the future, under the guise of neo-colonialism and power relationships. The exploitation by colonialist forces of the difficulties and problems confronting developing or recently liberated countries, interference in the internal affairs of those States and attempts to maintain, especially in the economic sector, a relationship based on inequality are serious threats to the new States. Colonialism, neo-colonialism and imperialism resort to various devices to impose their will on independent nations. Economic pressure and domination, interference, racial discrimination, subversion, intervention and the threat of force are neo-colonialist devices against which the newly independent nations must guard.

688. The countries which have acquired their national independence after years of struggle are reaffirming their determination, based in particular on the right of their peoples to self-determination, to resist, by any means available to them, any attempt to impair their sovereignty or to

violate their territorial integrity. International relations are currently entering a phase characterized by increased interdependence and by the desire of States to pursue an independent policy. The democratization of international relations is therefore an imperative need at the present time. Some major Powers exhibit an unfortunate tendency to monopolize decision-making in regard to global problems which are of vital concern to all countries of the world. The true independence of States, as distinct from formal sovereignty, is incompatible with any form of interference in the internal affairs of States. Policies of interference are largely conducted through a wide variety of highly subtle and refined indirect techniques—economic aggression, subversion and the defamation of Governments—designed to break up States and their institutions.

689. For small and medium-sized States, interference in their internal affairs gives cause for deep concern. Although the decolonization process has made remarkable progress, there are some cases in which the independence of States has not been ensured. The policy of pressure and domination continues to pose a serious threat to the independence of States. Measures designed to sow division and disorder threaten internal security and create political confusion and economic chaos. Interference takes many forms—political, economic and military—and is also practised through the information media. One manifestation of such interference is the use of mercenaries to undermine the independence of sovereign States and the national liberation struggle against colonial domination.

690. International life has brought out the importance of ensuring that States enjoy full and genuine independence, as opposed to mere formal sovereignty. Unequal relations between States, accompanied as they often are by domination and even the extinction of States' hard-won freedoms, remain a matter for concern. The major issue of the present day is the fight against the unequal relations and domination deriving from colonialism and related forms of domination.

691. The right to self-determination is a collective right, a fundamental human right forming part of the legal system established by the Charter of the United Nations, the beneficiaries of which are peoples—whether or not constituted as independent States—nations and States. Individuals participate, both directly and through the realization of other human rights, in the exercise of this right. Similarly, national minorities exercise this right through the enjoyment of the rights granted to them by article 27 of the International Covenant on Civil and Political Rights and of other individual human rights, whether civil, political, economic, social or cultural. Since the principles of international law concerning friendly relations and co-operation among States are interrelated, the exercise of the right to self-determination must contribute to safeguarding the political independence and territorial integrity of States, ensuring non-interference in their internal affairs and promoting international co-operation. To respect the independence of peoples and their existence and personality is also to respect the sovereignty and integrity of their States, which are essential elements in the exercise of the right of peoples to independence, namely their right to determine their own future and to organize their national life as they please. Respect for the sovereign rights of nations and peoples makes it possible to establish international relations based on friendship and co-operation. The violation of the principle of equal rights

and self-determination of peoples, on the other hand, constitutes a danger to the very existence of those peoples; it is an offence against international legality and a threat to world peace. The principle of equal rights and self-determination of peoples is therefore a fundamental element of the international order.

692. Although the principle of equal rights and self-determination of peoples constitutes a collective right, it nevertheless concerns each individual, since deprivation of that right would entail the loss of individual rights. The right to self-determination is a fundamental right without which other rights cannot be fully enjoyed. Consequently, the enjoyment of that right is essential to the exercise of all individual rights and freedoms. That is why it is accorded pride of place in the International Covenants on Human Rights. States therefore have an obligation to respect the right of peoples freely to determine their political status and to pursue their economic, social and cultural development. The right also implies that Governments owe their existence and powers to the assent of their people; the will of the people is the necessary basis of the Government's authority. It was with this in mind that the right to self-determination was incorporated in international instruments, and not with a view to encouraging secessionist or irredentist movements or foreign interference and aggression. By virtue of this principle, it is necessary to safeguard the political independence and territorial integrity of States which respect the equal rights of peoples and their right to self-determination and possess a Government representative of the population as a whole. Accordingly, the universal realization of the right to self-determination is of great importance for the effective guarantee and observance of fundamental human rights. At the same time, the promotion and protection of human rights and fundamental freedoms contributes to the implementation of the right to self-determination; the guarantee and observance of the various individual human rights and freedoms contribute, in the area of their exercise, to the realization of the different aspects—political, economic, social or cultural—of the right to self-determination.

693. The right to self-determination, which is a fundamental human right, plays an important part in the realization of the other human rights and freedoms, by creating the general framework and foundation for the implementation and promotion of human rights. At the same time, respect for each individual human right contributes to the exercise of the right to self-determination.

694. The political aspect of the right to self-determination continues to play a preponderant role, ensuring respect for the existence, sovereignty, independence and territorial integrity of nation States. However, the economic, social and cultural aspects of the right to self-determination are currently assuming increasing importance and are exercising a growing influence on the life of peoples, on the effort to establish a new international economic order, on balanced and integrated development and on the implementation and promotion of economic, social and cultural and civil and political human rights.

695. The recognition by the International Covenants on Human Rights and other important United Nations instruments of the economic, social and cultural aspects of the right to self-determination represented a milestone in the development of the content of that right. The interdependence of the various aspects of development, based on the

right to self-determination, is now commonly recognized throughout the world and has led to the formulation of the concept of balanced and integrated development, which is playing an increasingly important part in the efforts to establish a new international economic order. At the same time, the elaboration of the various economic, social and cultural aspects of the right to self-determination has resulted in the adoption of new rules forming a veritable international law of development.

696. The right of peoples to self-determination has acquired importance as an essential pillar in the construction of the new international economic and political order, since the political, economic, social and cultural problems of mankind are intimately linked and call for concerted action and because economic emancipation is an essential factor for the elimination of political domination. It is undeniable that there is a close link between political and economic questions and it would be illogical to deal with economic problems separately from political problems. A complete change of political attitude and proof of political will are a first essential step in achieving the new international economic order. A feature of the present international situation is the intensification of the struggle of the peoples of the world for political and economic independence, for peace and progress and for an international political and economic order based on the principles of self-determination, justice, equality and peaceful coexistence among the peoples and nations of the world.

697. A new international economic order must put an end to the exploitation of the weak and the poor by the strong and the rich. The efforts of the developing countries to secure co-operation in the establishment of a new international economic order have not been successful and have not obtained a satisfactory response from the developed countries. The economic gap between developed and developing countries is still widening, the rich becoming richer and the poor becoming even poorer. The developing countries are being denied their right to equality and to effective participation in international progress. The technological revolution, which is currently the monopoly of the wealthy countries, should constitute one of the main opportunities for the advancement of the developing countries. World solidarity is not only a just cause, it is a clear necessity. It is intolerable that some should today be enjoying a peaceful and comfortable existence at the expense of others condemned to poverty and misery.

698. A prerequisite for, and a vital component of, the new international economic order is a new political order for the system of inter-State relations, in other words, the construction of those relations on the basis of the fundamental principles and norms of international law in such a manner as to guarantee and ensure, in practice, full equality of rights for peoples, respect for their independence and national sovereignty, non-interference in their internal affairs and mutual advantage. Such a universal application of these principles and norms should, in practice, ensure the right of every people to be the master of its own affairs and a political order in which all States participate effectively in the preparation and adoption of decisions concerning the international community.

699. The permanent sovereignty of peoples over their wealth and natural resources, which is a component element of their right to self-determination and a new concept of international law deriving from the decolonization process

and the formulation of human rights and freedoms, is giving rise to a review of the rules of traditional international law and, at the economic and social level, has become the corner-stone of development. Responsibility for development lies primarily with the developing countries themselves, which must mobilize to this end all their wealth and resources, but their permanent sovereignty over their wealth and resources must be respected and strengthened, permanent sovereignty being also a basic factor for their economic and social development and their political independence. Wealth and natural resources constitute the material basis which ensures for peoples the exercise of their right to self-determination and the exercise of the other fundamental human rights. Consequently, any action aimed at destroying the permanent sovereignty of peoples over their wealth and natural resources is a violation of international law and an attack on the international order.

700. The economic development of peoples poses many problems for the international community, which is seeking a new order that will be more just and more equitable. Industrialization is a prerequisite for economic development and for development in the areas of food and agriculture. The development and establishment of a new international economic order call for measures to stimulate an equitable expansion of international trade and economic co-operation among States that excludes all forms of pressure and interference in the internal affairs of States and makes international trade an effective instrument for economic development. Science and technology, which are genuine sources of civilization, power, well-being and progress, must be used for the general advancement of peoples, including that of the developing countries. New resources must be mobilized for financing the economic and social development of the developing countries. Economic development must be accompanied by social development and a just social order, which are prerequisites for the full satisfaction of the aspirations of mankind and for contributing to guaranteed international peace and solidarity.

701. The promotion of human, economic, social and cultural rights helps to strengthen the general development of peoples. A prerequisite for the observance, assurance and promotion of human, economic, social and cultural rights and the development of the human personality to the present level achieved by civilization is the achievement of the right of peoples to self-determination and to the exercise of permanent sovereignty over their wealth and natural resources, and their right to choose their own economic system and to ensure their economic, social and cultural development. In order to secure such a guarantee and the genuine promotion of fundamental human rights and such economic, social and cultural development, it is imperative to establish a new international economic order based on the sovereign equality of States and respect for the equal rights of all peoples, an order that also guarantees the integrated economic, social and cultural development of every people and every State, in accordance with its aspirations to progress and well-being. The members of the international community have a responsibility and a duty to create the necessary conditions for the full achievement of economic, social and cultural rights as an essential means of ensuring the effective enjoyment of civil and political rights and fundamental freedoms.

702. The right to development possessed by all peoples, whether they constitute sovereign States or not, is becoming

vitaly important for the progress of humanity as a whole. The affirmation, the observance and the promotion of this right must be a matter of major concern for the whole international community. The urgency of the question of this right is dictated by the imperative development needs felt throughout the world and particularly in the most backward areas, which constitute an affront to human dignity and to civilization. The international community cannot tolerate such an injustice, such an inequality and such an imbalance between levels of development and in the degree of participation of its various constituent parts in the progress and advances of modern civilization and culture, at a time when scientific progress has brought a hitherto unknown abundance within reach of a part of mankind.

703. The right to development is a means of attaining the noble purposes of the Charter of the United Nations, including the promotion of "social progress and better standards of life in larger freedom", the ending of the division of the world into zones of poverty and zones of abundance and the ensuring of prosperity for all.

704. The right to development is an instrument of peace, since it can help the peoples of the developing countries to achieve a higher standard of living and thus avoid the danger to international peace and security constituted by the widening gap between the levels of living of peoples, stemming from privileges, extremes of wealth and poverty and social injustice.

705. The right of peoples to ensure their economic, social and cultural development is becoming an essential factor in the context of the establishment of a new international economic order.

706. The realization of the right to development, which is a primary task of States and international organizations, calls for the elimination from society of all the evils and barriers to social progress, particularly inequality, exploitation, war, colonialism and racism.

707. The right to development is a means of ensuring social justice at the national and international levels, a better distribution of income, wealth and social services, the elimination of poverty and the improvement of living conditions for the whole population. In order to achieve greater social justice, there must be an expansion of the national product, and specific social and economic policies that are oriented towards a distribution of income and wealth must be adopted. In this connexion, the redistribution of income through transfers and the provision of social services without charge or at low cost are merely corrective measures; the initial organization of the distribution of income is a determining factor in its structure and the principal instrument for the achievement of greater equality, having a direct impact on the level of income and wealth of individuals and groups. It is an economic and social measure that has repercussions in all fields, particularly on employment and wages, investment, the democratization of wealth, fiscal policy and social welfare. However, public ownership of the means of production, which is practised by a steadily increasing number of countries, is still the determining factor for an equitable distribution of the national income, for economic and social democratization and for social justice. Thus, economic growth, social and cultural development and social justice are integrated and complementary objectives of the International Development Strategy, but social justice at the national level is clearly linked with interna-

tional social justice, particularly in regard to trade, credits and financial assistance, prices and the marketing of products. The achievement of international social justice requires a new international economic order, since the existing order is in direct conflict with the contemporary international trends in political and economic relations, and there is a close correlation between the prosperity of the developed countries and the growth and development of the developing countries. The prosperity of the international community as a whole is linked with the prosperity of its constituent elements. Consequently, international co-operation for development is the goal and the common duty of all countries. In other words, the political, economic and social well-being of present and future generations depends, more than ever, on the existence among all the members of the international community of a spirit of co-operation based on sovereign equality and the elimination of the imbalance between them, on the realization of their aspirations and on the right of all peoples to ensure their political, economic, social and cultural development.

708. The real purpose of the new international economic order is not the material growth of nations, but the development of all men and women in every way, in a comprehensive cultural process involving profound values and embracing the national environment, social relations, education and welfare; in other words, the achievement of man's economic, social and cultural rights, or human development, for the benefit of man, must be the central factor in the development process. He is the key factor in economic and social development, which must be directed towards fulfilling the needs of an evolving and constantly diversifying human existence, and the unhampered affirmation, at all levels, of the human personality. The general goal of development must be to create equal social conditions for all individuals, in order that they may achieve their potential, as distinct personalities, in accordance with their capacities and aptitudes.

709. The fundamental element of the right to development and of the right of peoples to self-determination is permanent sovereignty over natural resources. Today, the right of peoples to self-determination can no longer be viewed from a purely political standpoint, but must also be seen increasingly from an economic, social and cultural point of view, for development in all its forms creates a sound basis for political independence, and the first step in such development is achievement of the permanent sovereignty of peoples and States over their natural resources and wealth. Any action, whether direct or indirect, designed to prevent a people or a State from exercising permanent sovereignty over its wealth and natural resources undermines the development of the peoples concerned and violates their right to self-determination. Respect for and promotion of the right of peoples to permanent sovereignty over their wealth and natural resources are prerequisites for the achievement of the right to development and the right to self-determination of peoples, and are essential for the strengthening of co-operation and universal peace. The promotion of the right of peoples to permanent sovereignty over their wealth and natural resources must be reflected in concrete fashion by legal measures that will ensure respect for this right and by the development of principles and measures designed to prevent and combat speculative fluctuations in and imbalances between the prices of raw materials and those of industrial products, so as to ensure the

normal development of international economic relations and thus to eliminate world economic insecurity, which is detrimental to the national planning of all countries and particularly of the developing countries, and to ensure the realization and promotion of the right of peoples to integrated and balanced economies and to social and cultural development.

710. The creation of suitable conditions at the international level is of vital importance for securing and promoting the right of peoples and individuals to development. Peaceful coexistence, friendly relations and active co-operation among States encourage the development of peoples. The success of international and national development activities will depend largely on improvement of the overall international situation and particularly on the concrete progress which must be made towards general disarmament, the elimination of colonialism, racial discrimination, *apartheid* and the foreign occupation of territories, and on promotion of equality of political, economic, social and cultural rights for all members of society. At the same time, the promotion of the right to development and the balanced economic and social development of peoples are prerequisites for ensuring the maintenance of peace and international security.

711. Development can be neither exported nor imported. On the contrary, it implies the taking into account of many economic, technical and social parameters and a choice of priorities and growth rates on the basis of a knowledge of specific needs, conditions and possibilities, and the participation of the whole community, animated by a common ideal and by individual and collective creativity, in the search for the solutions which are best adapted to the local conditions, needs and aspirations. The irreplaceable framework for such development, therefore, is State organization and the driving forces are the peoples and nations themselves, which have a direct interest in their own development. Peoples and States will be able to organize their development effectively only by ensuring the full exercise of their sovereignty, particularly in such matters as the choice of the form of social and political organization, control over natural resources, the choice of the development approach, the directions and pace of their economic and social development and the form of their participation in international trade. Rapid and economic social progress also requires structures and institutions that will ensure the creative participation of the people, fairness in the distribution of the fruits of development and the focusing of all efforts on the main directions of development. Bearing in mind that the national efforts of each people constitute the primary factor for development, substantial and effective international assistance must be given to those efforts, for the elimination of under-development is not only a moral imperative and an essential requirement for equity, it is also the expression of the general interest of peoples at all levels. At a time when the economic interdependence of States is increasing and when no country can remain insulated from world economic processes, all States, whatever their social system, their territorial extent or their economic potential, must contribute actively to the solution of the world's present major economic problems and to the development of peoples.

712. The right to economic, social and cultural development and to political progress is based on respect for the dignity and value of the human person, on the immediate

and complete elimination of all forms of inequality, exploitation of peoples and individuals, colonialism and racism, including Nazism, *apartheid* and all other practices and ideologies inconsistent with the purposes and principles of the United Nations concerning the recognition and effective observance of civil and political rights and economic, social and cultural rights, without any discrimination. At the same time, development also ensures the promotion of human rights and social justice.

Realization of the right to development

713. Development provides a vital contribution to the observance and promotion of human rights and fundamental freedoms. This most important idea has often been emphasized by the General Assembly, which stressed, in its resolution 2027 (XX) of 18 November 1965, the need, during the first United Nations Development Decade, to devote special attention at both the national and the international level to progress in the field of human rights, and to encourage the adoption of measures designed to acceler-

ate the promotion of respect for and observance of human rights and fundamental freedoms. In its resolution 2586 (XXIV) of 15 December 1969, the General Assembly considered that, in the preparation of the strategy for the Second United Nations Development Decade, the final aim must be the attainment of a rapid and sustained rate of economic and social development, especially in developing countries, and also the well-being, freedom and dignity of all human beings, and the enjoyment of all the civil, political, economic, social and cultural rights recognized by the Universal Declaration of Human Rights and guaranteed by the two International Covenants on Human Rights. Since the right of peoples to self-determination forms the basis for the enjoyment and development of individual human rights and also has major implications for the political, economic, social and cultural advancement of every nation, it remains a corner-stone of the new international order. Promotion by the United Nations of the right of peoples to self-determination and the progressive development of this right will be an essential means of achieving a new international order and a better, more just and more equitable world.

Chapter IX

RECOMMENDATIONS

714. Respect for the right to self-determination — a right proclaimed by the United Nations as a fundamental principle of the Charter — must be the basis of any action taken by the United Nations itself or by the Member States. If this fundamental right of peoples is to be attained, it is essential that the action already initiated by the United Nations and its Members should be continued and that measures calculated to ensure, in particular, the execution and full realization of this right in the areas of greatest contemporary concern should be adopted. In this connexion, the elimination of colonialism, neo-colonialism, racism, *apartheid* and other forms of the violation of the right to self-determination, and the adoption of strong measures to establish truly democratic relations between States and peoples are an urgent necessity at the present time. The United Nations must continue to take vigorous and firm action to bring about the prompt eradication of the vestiges of colonialism, a shameful anachronism which is blatantly at variance with the international ethics and principles unanimously proclaimed by the peoples of the world. The United Nations and the Member States must take effective measures to ensure the immediate and complete liberation of all peoples from any form of foreign subjugation, to eliminate all manifestations of exploitation and discrimination, racism and *apartheid*, and to repress any action intended to revive such practices. With the same object, the United Nations must devise specific measures to end all support to the colonial and racist régimes that disregard the right to self-determination, and take practical action to support the movements for the liberation of peoples from colonialism, neo-colonialism, racism, *apartheid* and foreign occupation, and to ensure the adequate representation of such movements within the United Nations by establishing favourable conditions for the work of their observers and preparing, under United Nations auspices, detailed programmes of effective multilateral assistance for these movements.

715. The provisions of the Charter which are based on the concept of the recognition of the rights of some countries to administer and dominate other countries and peoples are totally inconsistent with the realities of the modern world. The Charter should proclaim with complete clarity the total and permanent abolition of colonialism, neo-colonialism and racism, and the determination of the States Members of the United Nations to eliminate all practices engendered thereby; it should prohibit any form of interference by one State in the internal affairs of other States, pressure by one State on another, the dependence of one State on another, and the subordination of one State to another. The Charter should clearly affirm the right to self-determination as a fundamental principle of contemporary international law, and the right of peoples to exercise permanent sovereignty over their natural wealth and resources and to develop their material and human potential, in

accordance with their interests and aspirations. It should reflect the principles of law and justice which necessarily derive from the development of the right to self-determination and provide for the equalization of the levels of economic development of all countries, as a genuine basis for the democratization of international life. At the same time, it should affirm with the greatest possible clarity the need for the establishment of a new international economic order calculated to ensure the economic and social progress of all peoples and the unrestricted access of all peoples, in particular the least developed peoples, to the achievements of modern civilization and to open up the prospect of a better and more just world. The Charter of the United Nations should thus be the charter for the eradication of colonialism, neo-colonialism and racism, and of all forms of domination, oppression, inequity and inequality in international relations. It should be a charter of the rights of peoples, nations and States, and of fundamental human rights, and an international instrument such as to ensure full, multifaceted and unrestricted approval by every people and thereby open up the prospect of progress and peace for the whole world.

716. The political aspect of the right to self-determination, in other words the right of peoples to choose their political status, continues to be of particular importance, because this right will always ensure respect for the existence, sovereignty and territorial integrity of States. Consequently, the United Nations must always be capable of guaranteeing this right by combating any form of aggression, intervention or pressure against States and peoples, and of protecting their sovereignty and territorial integrity. The United Nations can no longer today permit the re-emergence, in any form whatsoever, of the domination of one State by another State or those forms of neo-colonialism which perpetuate the spoliation of peoples; it must combat any form of domination or subjugation which engenders international tension and conflict, wars with harmful and unforeseeable consequences, the arms race, the maintenance and accentuation of economic and social disparities between peoples and the phenomenon of economic crisis and instability.

717. *Apartheid*, all forms of racial discrimination, colonialism, foreign occupation, aggression and threats against national sovereignty, national unity or territorial integrity, and the refusal to recognize the fundamental rights of peoples to self-determination and of any nation to exercise its full sovereignty over its natural wealth and resources constitute factors which, by their very nature, are and engender, massive and flagrant violations of all the human rights and fundamental freedoms of peoples and individuals.

718. Consequently, the United Nations must continue forcefully to emphasize the harmful effect on the attainment of human rights, of the persistence of colonialism, aggress-

sion and threats against national sovereignty, national unity or territorial integrity, foreign occupation, discrimination in all its forms, *apartheid* and all forms of domination of one State by another.

719. At the same time, in connexion with the need to develop the right to self-determination, the United Nations must increase its contribution to the promotion, in international life, of new relations between peoples, nations and States. To this end, the preparation and adoption, within the context of the United Nations, of a universal code of conduct proclaiming the fundamental rights and duties of States will be of particular importance. Such a code will have to define standards to ensure rigorous respect for the right to self-determination, the incompatibility of that right with all forms of domination or pressure, genuine equality of rights for peoples, full political independence, respect for the territorial integrity of peoples, the illegality of military occupation and of the acquisition of territory through the use of force, and the elimination from international life of the possibility of misusing self-determination for purposes of interference or to undermine the national unity of States.

720. The international economic situation, characterized as it is by major disparities in development, is having an unfavourable effect on the achievement of the right to self-determination and on the social situation within the various countries, especially the developing countries; social distress and poverty can be eliminated only if the preconditions are established for economic growth and balanced and generalized social development. It is therefore incumbent upon the United Nations to tackle those economic and social problems that are of vital importance for the peace, progress and prosperity of the peoples of mankind as a whole, to analyse them in depth and systematically, and to devise and adopt, for the purpose of establishing the new international economic order, precise standards calculated to commit all Member States and special action programmes aimed at the attainment of this new order.

721. If the right to self-determination is to be achieved, the efforts made at the national level must be continued, so as to promote progress and development in the economic, social, cultural and political sectors, in order to meet the fundamental needs of the peoples concerned. Particularly important measures include the promotion of a more equitable distribution of income and wealth at the national level, the elimination of hunger and malnutrition, the reduction of unemployment and under-employment, the improvement of the distribution of social services and the broad democratic participation of peoples in the management of the political, economic and social life of their country. The United Nations can contribute to such efforts as a centre for the harmonization of the activities of Member States and for the exchange of experience among them, and by furnishing advisory services and providing the necessary financial assistance to enable measures to be taken in these areas.

722. In the exercise of the right to self-determination, particular importance must be attached to the urgent need to ensure, at the international level, respect for the principles, and the implementation of the decisions, relating to the establishment of the new international economic order, and respect for the objectives and the implementation of the measures provided for in the International Development Strategy for the Second United Nations Development

Decade — an essential condition for the success of the measures aimed at eliminating poverty and ensuring genuine social progress in the developing countries. To this same end, the developed countries which have so far failed to do so must act in a spirit of co-operation and interdependence, so as to ensure the social and economic development of the developing countries.

723. The ideal of the dignity and value of the individual, free and liberated from fear and poverty, can be achieved only if conditions are established to enable everyone to enjoy his economic, social and cultural rights, and his civil and political rights, and if all States fulfil the obligation to respect the purposes and principles of the Charter of the United Nations and to bring about international co-operation by resolving international problems of an economic, social, cultural or humanitarian nature, and by developing and encouraging respect for the human rights and fundamental freedoms of all, at the same time taking account of the varied nature of the problems which exist in the different societies and of the economic, social and cultural realities of each society. It is in this spirit that the United Nations must take due account, in its work concerning the execution and implementation of human rights, of the experience and over-all situation of the developing countries, and of the efforts made by these countries to give effect to human rights and fundamental freedoms. The United Nations must support these efforts through practical, far-reaching and long-term measures calculated to promote the economic, social and cultural progress of peoples and to create the international atmosphere of peace which is essential if progress is to be achieved in this area. In this context, too, more intensive efforts must be made within the United Nations to contribute to the execution and implementation of the economic, social and cultural rights of the individual, and to the affirmation, elaboration and implementation of the right to development as a fundamental human right.

724. To the same end, the United Nations must systematically and continuously support those efforts by States which are specifically reflected in structural measures aimed at ensuring the achievement of fundamental human rights, the elimination of social inequalities and all forms of discrimination, and the establishment of equal, genuine and effective rights to work, instruction, education, culture and the benefits of civilization.

725. The United Nations must take increasing account of the effect of mass information activities on international life and relations, and support national and international efforts to disseminate to the masses information which will promote the *rapprochement* of, and friendship among, peoples, the strengthening of respect for the traditions and culture of each people, and the dissemination of all of mankind's best achievements in all spheres of human activity and knowledge.

726. The United Nations must examine from an over-all standpoint the progress achieved, firstly, in the establishment of a new international economic order, and secondly, in the implementation of the right to self-determination in all its aspects — political, economic, social and cultural — and in the execution and application of economic, social and cultural rights, and of civil and political rights. It would seem necessary to ensure co-ordination, within the international development strategy, between economic, social and cultural development, on the one hand, and human rights on the other, and to undertake a thorough examination of

the progress achieved in this sphere. An over-all view of the achievement of the economic, social and cultural aspects of the right to self-determination and of its political aspect is necessary, because at present these different aspects come within the province of a variety of bodies within the United Nations and the specialized agencies. It is the responsibility of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to adopt this over-all approach to the achievement of the various aspects of the right to self-determination and the other fundamental human rights.

727. The progress achieved in social development must therefore be analysed in conjunction with the progress achieved in the sphere of human rights. This requires more effective co-ordination between the work of the United Nations bodies which deal with social questions and those which deal with fundamental human rights.

728. The United Nations must continue to study the relationship between the progress achieved in the implementation of economic, social and cultural rights, on the one hand, and civil and political rights, on the other, within the context of the realization of the right to self-determination. The attainment of the right to self-determination in all its aspects must constitute a continuing concern of the United Nations. In this connexion, on the basis of information

received from Governments, the United Nations is able to publish reports on the attainment of this right. The violation of the right to self-determination and the right of peoples to free themselves from colonial domination, racism and *apartheid* constitutes an international crime. In specific cases of the violation of this right, the provisions of the international conventions relating to the prevention of genocide, racism and *apartheid* must be implemented.

729. The study of the most salient aspects of the achievement of the right to self-determination, as mentioned above, is the responsibility of the United Nations bodies and the specialized agencies, which must pay continuing attention to, and take an increasing interest in, that matter, acting both individually and jointly. At the same time, in order to assist the United Nations in carrying out its tasks in these areas, with all their complexity and contemporary relevance, conferences, debates, seminars, round tables, etc. might be organized, with the broad participation of States and international non-governmental organizations. Such discussions would make possible a broad and deep analysis serving as a basis for the new measures which might be recommended and for the realization by international public opinion of the urgent need for a solution to the major problems on which the full enjoyment by all peoples of their right to self-determination depends.

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