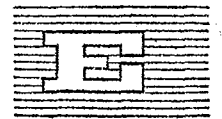


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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING

- (a) PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; THE RIGHT TO DEVELOPMENT
- (b) THE EFFECTS OF THE EXISTING UNJUST INTERNATIONAL ECONOMIC ORDER ON THE ECONOMIES OF DEVELOPING COUNTRIES AND THE OBSTACLE THAT THIS REPRESENTS FOR THE IMPLEMENTATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The regional and national dimensions of the right to development as a human right

Study by the Secretary-General */

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*/ This document contains Parts Two and Three and the Concluding Observations on the study. The Introduction and Part One of the same study were issued in document E/CN.4/1421.

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PART TWO: PROMOTION OF THE RIGHT TO DEVELOPMENT AT THE NATIONAL LEVEL

CHAPTER VII. CONDITIONS AFFECTING PROMOTION OF THE RIGHT TO
DEVELOPMENT AT THE NATIONAL LEVEL

A. Introduction: A Structural Approach

1. To an increasing extent in recent years United Nations endeavours in the fields of development and human rights have focused on the structural aspects of the issues under consideration. Thus for example both the report by the Secretary-General on the international dimensions of the right to development and the first part of the present study ^{1/} have examined some of the international factors which tend to promote and buttress inequitable national and local structures. In this part of the study, which is designed to complement the earlier analyses, consideration is given first to the general concept of a structural approach and then to certain structures and problems at the national level which constitute obstacles to realization of the right to development, especially in developing countries.

2. The following analysis is predicated on the principle that it is "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". ^{2/} It is appropriate to emphasize in this connection that, among the principles of the Charter to which States' objectives must conform, is that relating to the promotion and encouragement of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". ^{3/}

1. The situation in respect to the right to development at the national level

3. In broad terms an indication of the extent to which the right to development is presently enjoyed at the national level can be obtained from consideration of the statistics relating to the non-satisfaction of basic material human needs. An equally important, but less readily quantifiable, indication is the extent to which basic non-material human needs are being met.

4. In terms of material needs, the dimensions of absolute poverty - defined as "a condition of life so characterized by malnutrition, illiteracy and disease as to be beneath any reasonable definition of human decency" - is documented in the World Development Report 1980. According to the Report, the absolute poor in developing countries (excluding China and other centrally planned economies) number around 780 million. In 1975 about 600 million adults in developing countries were illiterate; and only two fifths of the children in these countries currently

^{1/} E/CN.4/L.1334 (1979) and E/CN.4/L.1421 (1980) respectively.

^{2/} Declaration on Social Progress and Development, General Assembly resolution 2542 (XXIV), article 3 (e).

^{3/} Article 1 (3).

complete more than three years of primary school. In 1978, 550 million people lived in countries where the average life expectancy was less than 50 years, 400 million in countries where the average annual death rate of children aged one to four was more than 20 per 1,000 - 20 times that of the industrialized countries.

5. Nor, according to the Bank, is there any serious disagreement about who the poor are. Half of the people in absolute poverty live in South Asia. A sixth live in East and South-East Asia, and another sixth are in Sub-Saharan Africa. The rest - about 100 million people - are divided among Latin America, North Africa and the Middle East. With the partial exception of Latin America (where about 40 per cent are in the towns) the poor are primarily rural dwellers, overwhelmingly dependent on agriculture - the majority of them landless (or nearly landless) labourers. Some minority groups are also over-represented among the poor. 4/ In his 1978 report on the implementation of the Declaration on Social Progress and Development, the Secretary-General pointed out that, "as measurable over the period since the adoption of the Declaration in 1969, there has been little real progress. The problems that served as a backdrop to the Declaration continue to persist, international and national action to solve them has taken place very slowly, and the conditions of the masses of people who were the target of the Declaration have not improved notably". 5/ The relevance of these statistics in terms of the right to development is clear. Conditions of absolute poverty are incompatible with the enjoyment of the most basic economic and social rights and usually serve to reinforce the accompanying denial of civil and political rights.

6. Information relating to the satisfaction or non-satisfaction of non-material human needs is considerably more sketchy and difficult to obtain. 6/ This is due in part to the difficulty of quantifying or measuring respect for the relevant rights, and in part to a reluctance by development experts and others to tackle what are questionably viewed as "political" rather than "technical" issues. Thus the notion of basic needs is all too often interpreted in a technocratic fashion which separates "material" from "non-material" needs and emphasises only the former in the shape of "core" needs such as nutrition, health, education and shelter. 7/ Such an approach is not readily compatible with the fundamental human rights concept that economic, social and cultural rights and civil and political rights are indivisible and interdependent. 8/ This technocratic approach has also been criticized on other grounds. "To take a few core needs out of their wider social context is objectionable if only because doing so abstracts from the social reality of poverty, inequality, exploitation, and economic insecurity. Poverty is more than a matter of a deficiency of goods and services for a certain proportion of the population: it is also fundamentally a question of the

4/ World Bank, Washington, D. C., 1980, pp. 32-34.

5/ E/CN.5/563, para. 99.

6/ The major sources of this information are generally non-governmental organizations.

7/ See G. Standing and R. Szal, Poverty and Basic Needs (Geneva, ILO, 1979). However, cf. Meeting Basic Needs: An Overview (Washington, D.C., World Bank, 1980).

8/ General Assembly resolution 32/130, para. 1 (a).

relationships between people and socio-economic groups. Indeed, it involves the combination of absolute and relative deprivations. Furthermore, logically none of the core needs can be defined as ends in themselves any more than can any other aspect of human existence". 9/

7. In general terms it may be said that the situation relating to respect for those human rights which are correlative to basic non-material human needs is far from satisfactory. As the Secretary-General has noted elsewhere "there is still, throughout the world, inadequate realization of the conditions necessary to bring about ... freedom from fear ... Various patterns of domination and subversion are unfortunately to be found in many areas of the world". 10/

2. A structural approach to development issues

8. The redefinition of the content and direction of development which has taken place in recent years has emphasized two major elements. The first is the need to think and plan primarily in terms of human development rather than economic growth. The second is the need in many instances for development efforts to be accompanied by major transformations in socio-economic and political structures. A structural approach thus focuses on those arrangements and institutions which give rise to and help maintain the existing distribution of political and economic power. 11/

9. Recognition of the importance of structural change at the national level has come from a diversity of sources both within and outside the United Nations system. Among the latter, mention may be made for example of:

(a) The 1975 report on Another Development which noted the need for "such fundamental steps as agrarian reforms, urban reforms, reforms of the commercial and financial circuits, redistribution of wealth and means of production as well as the redesigning of political institutions"; 12/

(b) The Group of 77's 1979 Arusha Programme for Collective Self-Reliance and Framework for Negotiations; 13/

(c) The 1979 Organisation for Economic Co-operation and Development Interfutures report; 14/

9/ Guy Standing, "Basic Needs and the Division of Labour", The Pakistan Development Review, Vol. XIX, No. 3, 1980, p. 213.

10/ "Present international conditions and human rights: Report of the Secretary-General", A/36/462, paras. 22-23.

11/ For an example of this approach see William W. Murdoch, The Poverty of Nations: The Political Economy of Hunger and Population (Baltimore, The Johns Hopkins University Press, 1980). Cf. an economic interpretation of structuralism in Hollis Chenery, Structural Change and Development Policy (New York, Oxford University Press, 1979).

12/ What Now: Another Development, The 1975 Dag Hammarskjöld Report on Development and International Co-operation, (Uppsala, Dag Hammarskjöld Foundation, 1975) p. 15.

13/ Group of 77 document 77/MM (IV/21 contained in UNCTAD document TD/236. See especially page 5, paras. 39-40.

14/ Interfutures: Facing the Future (Paris, Organisation for Economic Co-operation and Development, 1979) pp. 410-411.

(d) The 1979 Organization of African Unity Symposium on the future development prospects of Africa towards the year 2000, the final report of which noted that "the areas which depend on domestic policies, structural changes and systems of values must be given priority attention so that a new human-being-oriented African development policy can evolve in which the continent can find its own identity and status instead of having them imposed on it"; 15/

(e) The 1980 report of the Brandt Commission; 16/ and

(f) The Riobamba Charter of Conduct under which the signatory States resolved "to promote new integral development schemes based on the principles of social justice which will make it possible to change the unjust structures that still exist". 17/

10. Within the United Nations system the central importance of structural change at the national level was recognized in the 1969 Declaration on Social Progress and Development 18/ and has since been a major feature of the declarations and programmes of action adopted by United Nations conferences devoted to a wide range of specific issues ranging from the human environment and food to industrial development, employment, human settlements and primary health care. 19/ Most recently the Programme of Action adopted by the World Conference on Agrarian Reform and Rural Development, 20/ the World Conference of the United Nations Decade for Women: Equality, Development and Peace 21/ and the Caracas Declaration of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 22/ have also placed a strong emphasis on the need for structural

15/ What Kind of Africa by the Year 2000? (Addis Ababa, Organization of African Unity, 1979) p. 14.

16/ North-South: A Programme for Survival. The Report of the Independent Commission on International Development Issues under the Chairmanship of Willy Brandt, (London, Pan, 1980) pp. 126-128.

17/ A/C.3/35/4, Annex, p. 2, para. 2. Charter signed on 11 September 1980 by Colombia, Costa Rica, Ecuador, Panama, Peru, Spain and Venezuela.

18/ See, for example, article 8.

19/ The approach to structural transformation adopted by United Nations conferences held prior to 1977 is analyzed by Gilbert Rist, Towards a New United Nations Development Strategy: Some Major United Nations Resolutions in Perspective, (Nyon, International Foundation for Development Alternatives, 1977).

20/ Report of the World Conference on Agrarian Reform and Rural Development, Rome, 12-20 July 1979 (WCARRR/REF); transmitted to the members of the General Assembly by a note by the Secretary-General (A/34/485).

21/ Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, 14 to 30 July 1980, United Nations publication, Sales No. E.80.IV.3.

22/ Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August to 5 September 1980, A/CONF.87/14 and Add.1.

transformation at the national level to accompany international reforms. Thus, for example, the Programme of Action of the World Conference on Agrarian Reform and Rural Development states that:

"the goal of agrarian reform and rural development is transformation of rural life and activities in all their economic, social, cultural, institutional, environmental and human aspects. National objectives and strategies to achieve this transformation should focus on eradication of poverty, including nutritional improvement, and be governed by policies for attaining growth with equity, redistribution of economic and political power, and people's participation." 23/

3. The emergence of a structural approach to human rights issues

11. The emergence of a structural approach to a wide range of development issues has been paralleled by a similar development in the field of human rights, most notably in the context of the right to development. But while the importance of a structural approach to human rights has been recognized increasingly in recent years, it is hardly new. In 1948, the Universal Declaration of Human Rights proclaimed that everyone is entitled to a social order as well as an international order "in which the rights and freedoms set forth in this Declaration can be fully realized". 24/ Similarly, the right of self-determination which is contained in Article 1 of each of the two International Human Rights Covenants implies the need for equitable and appropriate structures through which peoples can "freely determine their political status and freely pursue their economic, social and cultural development". The importance of this right as a foundation for the right to development has consistently been stressed in the relevant debates of the Commission on Human Rights. 25/

12. While the concept of the right to development serves to highlight the importance of a structural approach to human rights issues, many of the specific components of such an approach have already been dealt with in reports on specific subjects which have been before United Nations human rights organs. In this regard particular reference may be made to the following studies: Racial Discrimination, The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities 26/ and the study of "the Problem of Discrimination against Indigenous Populations". 27/

13. The adoption of a structural approach is not in any way to be considered as something apart from the over-all human rights effort nor should it serve to distract attention from existing approaches and procedures for the promotion and protection of human rights. A structural approach to human rights issues is not a substitute for, but rather a complement to, the existing panoply of political, economic, social

23/ Op. cit., p. 4.

24/ Article 28.

25/ Official Records of the Economic and Social Council, 1981, Supplement No. 5, (E/1981/25), para. 117.

26/ United Nations publications, Sales Nos. E.76.XIV.2, E.75.XIV.2 and E.78.XIV.1 respectively.

27/ See E/CN.4/Sub.2/476 and Add.1-6.

and cultural policies at all levels. At the very least, however, it does serve to focus attention on a wide range of obstacles which are presently impeding the enjoyment of human rights and which must be removed if other efforts are to attain their full potential. It also accords recognition to the fact that human rights violations do not occur in a vacuum. In a number of instances such violations are not mere aberrations in the context of systems and structures which are otherwise equitable. Rather, they are more appropriately viewed as the natural consequence of systems rooted in injustice and inequality and which are often created and reinforced by a range of consciously pursued political, social and economic policies. Such policies then are inconsistent with the principles underlying the concept of the right to development.

4. A structural approach to the right to development

14. The General Assembly has on two occasions emphasized "that the right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations". ^{28/} While the implications of a structural approach to the right to development in its international dimensions have been explored to some extent in the context of the quest for a new international economic order, ^{29/} it still remains necessary to spell out the implications at the national level. In seeking to do so, two extremes must be avoided. On the one hand, there is a danger that the implications of a structural approach could remain vague and unclear and that the term could be used as a slogan to mask inaction or to justify the neglect of non-structural issues or specific violations of human rights. On the other hand there is a risk in seeking to be too precise in terms of a specific definition of a structural approach since the details of such an approach must constantly be evolving and will vary significantly from State to State and from time to time.

15. Nevertheless, in general terms it may be said that the structures required at the national level to facilitate realization of the right to development are those which enable people to control their own destinies and to realize their full potentials. ^{30/} Thus structures which are readily open to manipulation or domination by various élite or other groups and which are conducive to, or supportive of, exploitation or repression are unacceptable. There is therefore a need to review existing structures, and where necessary to reform them or create new ones, in order to ensure that they do not have the actual or potential effect of perpetuating inequality, discrimination or injustice, and that they are readily responsive to the true needs of the people.

^{28/} General Assembly resolutions 34/46 (para. 8) and 35/174 (ninth preambular paragraph).

^{29/} See the views of the Committee for Development Planning contained in Shaping Accelerated Development and International Changes, (United Nations publication, Sales No. E.80.II.A.4), p. 10; and Report of the Seminar on the Effects of the Existing Unjust International Economic Order on the Economies of the Developing Countries and the Obstacle that this Represents for the Implementation of Human Rights and Fundamental Freedoms, Geneva, 30 June to 11 July 1980, ST, HR/SER.A, 8.

^{30/} See Johan Galtung, "What Kind of Development and What Kind of Law?", in Development, Human Rights and the Rule of Law (Oxford, Pergamon Press, 1981).

16. In complementing existing national level approaches to the promotion of human rights in general, and the right to development in particular, a structural approach requires a deeper analysis of human rights questions which goes beyond asking "what is the situation" by inquiring also into the "how" and "why" of situations involving the non-realization of the right to development. It also requires recognition of both the political nature of the existing structures and of the extent to which various factors are inter-related. Thus, for example, if the right-to-food component of an individual's right to development is not being satisfied it is necessary to look beyond solutions such as food aid or temporary welfare assistance to the broader structures which give rise to the problem in the first place. As a recent International Labour Organisation report notes:

"The well-being of an individual, household or collectivity depends on many things - the level of money income and of prices, the volume of production for self-consumption, the distribution of purchasing power, the allocation of government expenditure, the extent of participation in making the important decisions which affect one's life, the extent to which society is divided into classes and the degree of social mobility." 31/

17. It is appropriate in the present context to illustrate the structural nature of some of the obstacles to the individual's enjoyment of his or her right to development. This may be done by considering the structural interdependence of two issues which are currently being dealt with by the Sub-Commission on Prevention of Discrimination and Protection of Minorities: child labour and debt bondage. These two issues are often directly linked because the inability of parents to pay off their debts (perhaps aggravated by exorbitant interest rates) leads them to bond their children as labourers for the benefit of the landowner or money-lender concerned. In addition to the denial of basic freedoms inherent in the position of bonded labourers, child workers are often exposed to serious health hazards which adversely affect their mental and physical development and their life expectancy. Moreover, "anger, frustration, feelings of injustice or a sense of helplessness can create serious psychological disturbances and behavioural aberrations". 32/ An International Labour Organisation survey of these problems concludes that:

"In many countries ... children expose themselves to hardship and hazard, inconvenience and abuse, basically because of poverty. It is a symptom of a deeper malady which afflicts societies where the plenty of the few seems to be ensured by the penury of the many. In such traditional economies any legislative or purely welfare measures for the control of child labour or substantial improvement of the conditions of life and work of women may not yield the desired effects. Interests which benefit from such abuses may be too strong to thwart any serious attempts at removing them. Abuses that are being witnessed today in the field of employment of women and children are the results of structural failure, and it is difficult to make any major amends without significant structural changes." 33/

31/ Poverty and Landlessness in Rural Asia (Geneva, International Labour Office, 1977) p. 25.

32/ Problems of Rural Workers in Asia and the Pacific, ILO Asian Regional Conference, Manila, December 1980, Report III, pp. 55-56.

33/ Ibid., p. 57.

The significance of structural transformation in the context of the right to development was similarly recognized in the debates of the Commission on Human Rights in 1981 during which it was said that the "just and equitable distribution of national wealth and income, the removal of inequality, the elimination of hunger and malnutrition and the provision of adequate housing required the restructuring of societies at both the national and international levels". 34/

18. In the following sections of this chapter consideration is given to a small number of selected issues which have been discussed by the Commission on Human Rights and which appear to be of particular significance for the realization of the right to development at the national level. In general terms the present analysis seeks to highlight the human factor 35/ in all development efforts and to emphasize that the notion of accountability which has already been discussed in an international context, 36/ is equally applicable to promotion of the right to development at the national level.

B. Some specific conditions affecting promotion of the right to development at the national level

1. Distribution of income and wealth

19. The Declaration on Social Progress and Development provides, in Article 7, that "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". "A just and equitable distribution of income" is also called for in Article 10 (c) of the Declaration.

20. The continued prevalence and often increasing incidence of malnutrition, poor health and inadequate housing as well as illiteracy and low access to appropriate educational and other facilities reflect the fact that people lack the income required to meet their most essential individual needs. The fact that the numbers of absolutely poor people have increased in the past three decades despite the achievement of rapid economic growth in many developing and developed countries is well documented. 37/ This trend reflects a highly skewed distribution of wealth and

34/ Official Records of the Economic and Social Council, 1981, Supplement No. 5, (E/1981/25), para. 121.

35/ As the United Nations Committee for Development Planning has noted, "Policies in such fields as education and skill-raising, health care, housing and urban development, population, and participation of women and youth in development have direct impact not only on the satisfaction of human needs, but also on the quality of the human factor and on its dynamism. These policies, therefore, influence the rate of economic progress in the long run". Official Records of the Economic and Social Council, 1979, Supplement No. 7, (E/1979/37), para. 103.

36/ E/CN.4/1421, paras. 35-38.

37/ See World Development Report, 1980, op. cit. "Implementation of the Declaration on Social Progress and Development, Report of the Secretary-General", E/CN.5/563 (1978), Chapter V; and "Distribution of Income: Trends and Policies, Report of the Secretary-General", E/1978/29. The latter report includes a selected bibliography of United Nations documents on income distribution.

income which is in many respects a reflection and consequence of the employment situation. The link between employment and income distribution is illustrated by the following analysis: "Where income distribution is unequal and where those of the upper income levels are given privileged access to scarce resources the products in demand will be similar to those produced in industrialized countries and will therefore tend to have an established basically capital-intensive technology". ^{38/} Capital-intensive technology, in turn, tends to have "few linkages with the traditional rural or the informal urban sector, which between them account for by far the greater part of the total employment in most developing countries. As a result, the benefits of growth, and in particular opportunities for productive employment, have mainly gone to a very small part of the population". ^{39/} As the Secretary-General has noted elsewhere, this has, as a consequence, led to an even more skewed distribution of income and to the renewed reinforcement of the whole process of maldevelopment. ^{40/}

21. It is not possible in the present study to consider the complex interrelationships between income and wealth distribution patterns on the one hand and different development policies and approaches on the other. What is required, however, in connection with a study of the right to development at the national level is to take note of the longstanding debate over the relationship between growth and equity. Implicit in conventional growth-oriented strategies was the assumption that gross income inequality was appropriate and perhaps necessary in the early stages of growth in order to provide incentives for entrepreneurs and to raise savings and investment. From the present perspective the major consequence of such an approach is an inevitable downgrading in the priority accorded to human rights concerns, ^{41/} at least in what is presented as the short-term.

22. In recent years, however, there has been increasing recognition from policy-makers that growth and equity not only are compatible but can be approached in such a way that one reinforces the other. As the former President of the World Bank stated, in 1980, the argument that "poverty is a long-term problem" whereas "current account deficits are a short-term emergency" is a "very specious" one.

"To ignore [absolute poverty], to temporise with it, to downgrade its urgency under the convenient excuse that its solution is 'long-term' - and that there are other immediate problems that pre-empt its priority - is dangerous self-deception. To reduce and eliminate massive absolute poverty lies at the very core of development itself. It is critical to the survival of any decent society." ^{42/}

^{38/} Hans Singer, Technologies for Basic Needs (Geneva, ILO, 1977) p. 25.

^{39/} Employment, Growth and Basic Needs: A One-World Problem (Geneva, ILO, 1976) p. 16.

^{40/} E/CN.4/563 (1978) para. 90.

^{41/} According to one commentator "any strategy based on income disparity prevents the State that pursues it from realizing the full potential of the capacities and capabilities of its citizens". The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights (United Nations publication, Sales No. E.75.XIV.2), Part 6, chap. I, para. 22.

^{42/} Robert S. McNamara, Address to the Board of Governors, Washington D.C., 30 September 1980, (Washington D.C., World Bank, 1980) pp. 18-19

23. In the same vein, the World Bank's World Development Report, 1980 contains a detailed analysis of the interrelationships between poverty reduction strategies and economic growth. The Report notes, for example, that "people who are unskilled and sick make little contribution to a country's economic growth. Development strategies that bypass large numbers of people may not be the most effective way for developing countries to raise their long-run growth rates". 43/ In a separate report based on a number of specific country studies the Bank concluded that: (a) if objectives in the distribution of income and meeting basic needs are pursued rationally, they need not cause any sacrifice of economic growth; (b) the more pressing needs of societies can be satisfied even at low levels of national income; and (c) the fulfilment of basic needs should contribute to a significant reduction in fertility rates. 44/

24. A 1981 report by the Secretary-General on "aspects of social development in the 1980s", after reviewing some of the data on income distribution and related issues, discerned the following "practical principles" which could guide policy in the present decade: 45/

(a) Many social injustices, cumulatively oppressive, could be avoided without prejudice to economic efficiency;

(b) Experience suggests that many ideals and measures that are consonant with with the promotion of greater equity and social justice are also generally favourable to economic efficiency and expansion;

(c) The production and distribution of public services remains an essential instrument to promote more equity, in spite of its as yet limited role in most developing countries;

(d) Income inequality differs from country to country, and certainly among developing countries. Each country's circumstances are unique, and social justice, in income distribution as in other areas, can be pursued most effectively in the context of the country's over-all circumstances and priorities; but this is not to say that quite radical changes may not be possible;

(e) A growing emphasis is to be expected in lower-income countries on policies seeking to promote equity through economic improvement for broad groups of the population, such as industrial workers and farmers, as opposed to a concern for individual welfare, especially in favour of the weak;

(f) There is the ever present danger that economic setbacks can strain beyond breaking point the tensions already found in a society undergoing rapid growth and social change. Ingrained in rapid growth is a potential for undermining social consensus and social cohesion.

43/ World Development Report 1980, op. cit., p. 36.

44/ Meeting Basic Needs: An Overview, Poverty and Basic Needs Series, September 1980 (Washington D.C., World Bank, 1980), p. 14.

45/ E/CN.5/585, paras. 31-36.

25. In International Labour Organization report, drawing on a number of country specific case studies, concludes even more emphatically that "under prevailing conditions the connection between inequality and household savings is very weak and perhaps non-existent". The link between inequality and corporate or public savings is, if possible, even more tenuous". In summary, the report states that "an unequal distribution of income cannot be justified on grounds of increasing the rate of accumulation. Nor, it is suggested, should it be justified on grounds of incentives. It is contended that there is no valid economic argument in favour of inequality. There are, however, powerful arguments against it".

26. In so far as gross inequalities in the distribution of income constitute an obstacle to realization of the right to development at the national level, consideration should continue to be given to policies of income redistribution. However there is now some evidence to suggest that such policies constitute only a small part of the required solution. Thus, for example, the aforementioned International Labour Organization study suggests that perhaps only a redistribution of wealth, particularly of landed wealth, through agrarian reform and similar measures, will be able to stop the process of impoverishment of sections of the rural population within a reasonable period.

27. Before considering the issue of urban/rural differentials in more detail, it is appropriate to note briefly the relevance to income and wealth inequalities of the structural orientation of the concept of the right to development. The inequalities which exist in any given society are rooted in its system of values and to a large extent therefore reflect the prevailing political structures. This is borne out by a recent analysis on the basis of the experience in specific countries and prepared by the Economic Commission for Latin America.

"The correlation between the political regime and the profile of income concentration is certainly very close... In general, the forms of concentration are closely linked to the degree of modernization of the economy, the organization of civil society, the levels and forms of political participation and the influence of certain groups over state action, as well as the structure assumed by the state within this framework. Income concentration depends, in the last analysis, on the political capacity of the managing minorities to oblige the majority of the population to accept increasing social inequality."

Thus policies designed to promote realization of the right to development at the national level must focus as much on the democratic transformation of existing political power structures as on the quest for achieving more equitable economic and social policies and structures.

46/ Poverty and Underdevelopment in Rural Asia, op. cit. p. 32. According to

Genji, "There is substantial evidence that those countries that have chosen a

strategy of development giving high priority to social justice, considering man as the subject rather than the object of development, at the end rather than the means of economic progress, have not suffered in terms of their economic growth. On the contrary, they have proved to have better prospects for a self-sustaining and

integrated national development than those which have placed the main emphasis on economic growth". op. cit. Part 6, para. 63.

47/ Ibid., chap. 1.

48/ Jorge Gaverana, "Types of income concentration and political styles in Latin America", CEPAL Review (United Nations publication, Sales No. E.77.II.C.2).

2. Rural development

28. In its resolution 3362 (S-VII) on development and international economic co-operation, the General Assembly stressed the "responsibility of each State concerned, in accordance with its sovereign judgment and development plans and policies, to promote interaction between expansion of food production and socio-economic reforms, with a view to achieving an integrated rural development". ^{49/} In recent years very considerable attention has been given by national Governments and by international organizations both to the challenge of promoting integrated rural development including the issue of land reform and to the question of rural/urban differentials in income and well being in general. The importance of considering these issues in connection with the right to development is illustrated by reference to Asia (excluding China) within which 74 per cent of the world's absolute poor live. According to the International Labour Organisation, the overwhelming majority of the absolutely poor in the Asian region (over 80 per cent) live in rural areas. ^{50/} The link between rural development and promotion of the right to development is also underlined by the following definition contained in a recent United Nations Development Programme report: "rural development is ... a process of socio-economic change involving the transformation of agrarian society in order to reach a common set of development goals based on the capacities and needs of people. These goals include a nationally determined growth process that gives priority to the reduction of poverty, unemployment and inequality, and the satisfaction of minimum human needs, and stresses self-reliance and the participation of all the people, particularly those with the lowest standards of living". ^{51/}

29. While the same report notes the risk that an emphasis at the international level on rural development issues could be interpreted as an attempt on the part of the rich countries to divert attention from questions of international resource and technology transfer or to maintain third world countries in their dependency status, it argues that "simple logic forces the developing countries themselves to give more weight to agrarian issues". ^{52/}

30. This emphasis was strongly endorsed in the Declaration of Principles and the Programmes of Action adopted in July 1979 by the World Conference on Agrarian Reform and Rural Development. ^{53/} Similarly, the International Development Strategy for the Third United Nations Development Decade adopted by the General Assembly on 5 December 1980 provides that:

"In the context of integrated rural development, Governments will encourage rural industrialization, the establishment and strengthening of agro-industrial complexes, the modernization of agriculture, better integration of women in all stages of the production process and the ensuring thereby of increased production of food and other agricultural products, and employment for the rural population. Governments should encourage and support the establishment of agricultural co-operatives." ^{54/}

^{49/} Part V, para. 3.

^{50/} Asian Development in the 1980's: Growth, Employment and Working Conditions, Ninth Asian Regional Conference, Manila, 1980, Report of the Director-General, Report 1 (Part 1) (Geneva, ILO, 1980), pp. 6 and 8.

^{51/} Rural Development: Issues and Approaches for Technical Co-operation, United Nations Development Programme Evaluation Study No. 2, New York, 1979, para. 1.

^{52/} Ibid., para. 3.

^{53/} Op. cit.

^{54/} General Assembly resolution 35/56, annex, para. 95.

31. In the present study it is not proposed to duplicate the substantial amount of work undertaken elsewhere within the United Nations system. 55/ Rather it must suffice to note that the structural implications of the right to development at the national level are nowhere better exemplified than in the area of rural development and agrarian reform. A wide range of reports and studies clearly indicates that the challenge of rural development goes well beyond the need to reverse the "urban bias" 56/ or to allocate more financial and technical resources to rural areas. The reality is that "the desired transformation of agrarian society in most cases requires a change in the structure of political and economic power, both local and national". 57/

32. In this connection, considerable emphasis has been placed on the redistribution of land ownership in favour of the poor, i.e., land reform. As the World Bank noted in 1975, "while the focus on land reform is related to economic development, the concept of an overriding social function of land justifying the imposition of limitations on private rights appears to be gaining the support of many groups". 58/ The issues arising out of land reform proposals have often been controversial and potentially involve significant human rights issues, which can only be briefly touched upon in the present context.

33. The case in favour of land reform and associated measures had been stated by the International Labour Organisation in the following terms: "A reduction in inequality ... if brought about through a redistribution of landed property and supported by subsidiary measures such as the provision of credit and marketing facilities, is likely to raise total production and is certain to raise the incomes of the poor. Indeed, it has been rightly stated that 'rural development cannot be said to have begun without land reform'". 59/ The case for land reform measures, in connection with promotion of the right to development at the national level, is clearly presented in the "National Programme of Action for Developing Countries" adopted by the World Conference on Agrarian Reform and Rural Development:

"The systems of ownership and use of land and access to water and other natural productive resources are determined by historical, political, social and economic conditions of individual countries. They vary between different countries and constitute the key determinants of rural economic structures, income distribution and general conditions of rural life. Where these systems are judged to be constraints on rural development, achievement of social equity, and wide access to land and other natural resources for the vast majority of rural masses, governments should consider institutional, legal and policy changes within the context of their national and rural development goals, and promote a broad understanding by the people concerned of the need for such measures and of the procedures." 60/

55/ See, for example, "Integrated rural development: approaches and issues, Report of the Secretary-General" E/CN.5/571 (1979); and "Distribution of income in the nation: rural-urban differentials, Report of the Secretary-General", A/35/231 (1980).

56/ See especially Michael Lipton, Why Poor People Stay Poor: A Study of Urban Bias in World Development (London, Temple Smith, and Cambridge, Harvard University Press, 1977).

57/ Rural Development, op. cit., para. 4.

58/ Land Reform (Washington, D.C., World Bank Sector Policy Paper, 1975) p. 24.

59/ Poverty and Landlessness in Rural Asia, op. cit., p. 34. See also Asian Development in the 1980's, op. cit., p. 26; and "Social consequences of the green revolution: report by the Secretary-General" E/CN.5/567, para. 107.

60/ Op. cit., p. 6.

34. Experience to date with land reform measures has been mixed. Many countries, particularly those on the Indian subcontinent, have attempted to limit by legislation the land area owned by each individual or family in order to alleviate the serious problem of landlessness. Little land has, however, actually been redistributed as a result of these measures. 61/
35. In Africa, with few exceptions, policies for asset distribution have not been a major aspect of development strategies. 62/ Recent achievements in agrarian reform in most Latin American countries have been "of a conceptual and institutional nature rather than of a structural nature ... Agrarian reform beneficiaries are approximately 22 per cent of the potential beneficiaries". 63/
36. In general terms, despite the fact that land reform will usually increase agricultural output (because small farms tend to apply more labour per hectare and to use land and capital at least as productively as large farms) "it faces social and political opposition - from landlords and from urban groups that benefit from the bigger marketed surpluses of large farms". 64/ It is the strength of this opposition which may give rise to human rights problems. Genuine land reform efforts are sometimes undertaken in response to an external or internal threat to the Government. In such circumstances undemocratic methods may be used. In the past, according to one observer, the implementation of land reforms "has not infrequently been accompanied by loss of life, violence, and abrogation of civil liberties and human rights. Not infrequently have attempts to implement land reform through actual redistribution resulted in a severe backlash in the form of counter-coup or even counter-revolution. Needless to say, the latter events have also involved major violations of civil liberties and of the dignity and freedom of individuals, as well as major loss of life". 65/ Yet failure to undertake much needed land reforms can equally lead to violence. According to one report, it may, under certain circumstances, be "impossible to put off land reform and at the same time avoid violence. Peasant movements and associations are repressed wherever there is a land problem and this repression is itself violence". 66/
37. Since participation and equity are part of the essence of the right to development and since that concept also implies full respect for both sets of human rights, it is imperative therefore that land reform and related measures be undertaken democratically and in such a way that both the resources and the consciousness of all

61/ Progress in Land Reform, sixth report (United Nations publication, Sales No. E.76.IV.5) p. 52.

62/ Ibid., pp. 19-28.

63/ Ibid., p. 85.

64/ World Development Report, 1980, op. cit., p. 41.

65/ Irma Adelman, "National and International Measures in Support of Equitable Growth in Developing Countries: A Proposal", unpublished paper, Leiden University, 1978, p. 8.

66/ Claire Whittemore, Land for People: Land Tenure and the Very Poor (Oxford, OXFAM, 1981) pp. 20-21.

the people are mobilized. 67/ In particular, land reform measures should be accompanied by respect for the right to freedom of association and should provide for full peasant participation in the discussion and implementation of land-related policies. 68/ As one report has noted, "well-intentioned reform laws can easily be circumvented when the potential beneficiaries are unorganized. By contrast, when the peasantry is actively involved in designing and implementing reforms, not only the initial enforcement but also the organization and progress of post-reform agriculture are facilitated". 69/

3. Population-related issues

38. Few human rights issues are as potentially complex as the relationship between the right to development at the national level and the whole range of population concerns. The World Population Conference held in 1974 adopted a World Population Plan of Action which it termed "an instrument of the international community for the promotion of economic development, quality of life, human rights and fundamental freedoms". 70/ The Plan of Action recognizes the essential interrelationships between population policies, respect for human rights and progress towards development. Population programmes must contribute to the enjoyment of human rights if development, in the fullest sense, is to be realized.

39. However, despite the strong and wide-ranging emphasis which the Plan of Action attaches to human rights considerations, the practical application of population policies inevitably gives rise to a number of important human rights-related questions. Many of these have already been dealt with at some length in the following contexts: (a) in the Report of the Symposium on Population and Human Rights held in Amsterdam from 21 to 29 January 1974 71/ in connection with preparation for the World Population Conference later that year; (b) in the Report of the World Population Conference itself; (c) in a UNESCO publication entitled Human Rights Aspects of Population Programmes with Special Reference to Human Rights Law 72/; and (d) in research undertaken in connection with projects sponsored by the United Nations Fund for Population Activities. 73/ Moreover, a Second Symposium on Population and Human Rights

67/ See generally, Dennis A. Rondinelli, "Administration of Integrated Rural Development Policy: The Politics of Agrarian Reform in Developing Countries", World Politics, Vol. XXXI, No. 3, 1979, pp. 389-416.

68/ See especially the provisions of ILO Convention No. 141 of 1975, "Convention concerning organizations of rural workers and their role in economic and social development".

69/ Erik Eckholm, The Dispossessed of the Earth: Land Reform and Sustainable Development, (New York, Worldwatch Paper 30, 1979) p. 34; see also Derechos Humanos en las Zonas Rurales (Bogotá, Comisión Internacional de Juristas and Instituto Latinoamericano de Investigaciones Sociales, 1979).

70/ Report of the United Nations World Population Conference, 1974, Bucharest, 19-30 August (United Nations Publication, Sales No. E.75.XIII.3), p. 3, para. 1.

71/ E/CONF.60/CBP/4 (1974).

72/ Paris, UNESCO, 1977.

73/ See, for example: Daniel G. Partan, "Human Rights Aspects of Population Programmes", in Philip M. Hauser (ed.) World Population and Development: Challenges and Prospects (New York, Syracuse University Press, 1979) pp. 486-537; L.A. Peter Gosling, "Population Redistribution and Human Rights", in L. Gosling and L. Lim (eds.), Population Redistribution: Patterns, Policies and Prospects, Policy Development Studies No. 2 (New York, United Nations Fund for Population Activities, 1979) pp. 152-58; and The Role of Incentives in Family Planning Programmes, Policy Development Studies No. 4 (New York, United Nations Fund for Population Activities, 1980).

was held at Vienna in July 1981. Thus in order to avoid duplication of the wealth of material which has been or will be generated in these contexts the present section is confined to noting some of the general human rights principles governing population policies and briefly considering the present state of the debate over the relationship between development and the three main sets of demographic variables: fertility; mortality and morbidity; and migration. 74/

(a) General principles

40. The World Population Plan of Action is based on a number of principles, the first of which provides that the principal aim of social, economic and cultural development, of which population goals and policies are integral parts, is to improve levels of living and the quality of life of the people. 75/ The Plan emphasizes that population policies are constituent elements of socio-economic development policies and must never become substitutes for them. 76/

41. In accordance with the principles underlying the right to development, the World Population Conference stated that full participation of the people in the formulation and implementation of population policies itself constituted a human right, as well as being an indispensable requirement for ensuring the effectiveness of these policies and respect for other human rights and freedoms. 77/ The Plan of Action also indicated that "true development", together with its demographic components, "cannot take place in the absence of national independence and liberation" and that development "requires ... self-determination". 78/

(b) General observations relating to fertility and human rights

42. Programmes designed to lower fertility and rates of natural increase have been implemented in many States including at least 38 developing countries. 79/ The reduction of population growth is not an end in itself; nor, according to the World Bank, "does it for every country or for every point in time increase the potential growth of income per person. But in the circumstances prevailing in most of the developing countries, rapid population growth impedes economic growth by reducing investment per person in physical capital and human skills". 80/

43. The factors that influence fertility rates are complex and have been the subject of considerable research and debate. The need to raise the issue at all in the present context reflects the fact that the quest for rapid and effective means by which to reduce fertility levels has often been pursued without proper respect

74/ See also chap. III, of the present study (contained in E/CN.4/1421) on international migration issues and the right to development.

75/ Report of the World Population Conference, op. cit., p. 7, para. 14(a).

76/ Ibid., para. 14(d).

77/ Ibid., p. 8, para. 14(j) and para. 15(g).

78/ Ibid., p. 7, para. 14(b).

79/ "Concise report on monitoring of population policies, Report of the Secretary-General", E/CN.9/348 (1980) para. 43.

80/ World Development Report, 1980, op. cit., p. 65.

for human rights principles, including the right to development. From the human rights perspective it is essential that such programmes take into account the right of couples to "determine freely and responsibly the number and spacing of their children" which was included in the Proclamation of the International Conference on Human Rights. 81/ Accordingly, the Declaration on Social Progress and Development calls upon Governments to make available to couples the "knowledge and means necessary to enable them to exercise" this right. 82/ These principles were reiterated in the context of the World Population Plan of Action which also defined "responsibly" as requiring couples and individuals to take "into account the needs of their living and future children and the responsibility towards the community". 83/ The Conference stressed that family planning programmes must be such that "they are carried out with absolute respect for the fundamental rights of the human being, that they preserve the dignity of the family, and that no coercive measures are used". 84/ In many respects these three principles, involving respect for human rights, preservation of dignity and the absence of coercion, are, from the perspective of the right to development, equally applicable to most other aspects of population policies.

44. While policies designed to reduce fertility usually involve family planning programmes, there has also been a strong expansion in recent years of programmes providing economic incentives and disincentives to influence the demand for family planning services. Economic incentives range from programmes for the free distribution of modern contraceptive devices and State subsidies for abortions and sterilizations to schemes providing rewards in cash or in kind to persons who have had an abortion or have been sterilized. 85/ Disincentives, on the other hand, are designed to penalize financially couples whose reproductive behaviour is out of line with the wishes of the Government, for instance through denial of maternity leave after the third or fourth child, removal from the priority list for low-cost housing of families with more than a certain number of children, denial of tax relief after the third child, and possibly the withholding of family allowances. 86/ However, in the application of these approaches, there is, as the Secretary-General has noted elsewhere, "a great temptation to resort to pressure in a greater or lesser degree, first as a supplement to, and then as a substitute for, ... costly economic incentives". 87/ As a recent UNITAR study has noted:

"Authoritarian efforts to impose birth control have proved not only unacceptable to human dignity, but ineffective as well. Population growth in Third World countries would diminish substantially if better living conditions were extended to the huge marginal sectors of society. Policies can hardly be implemented to satisfy social needs, and demographic behavior can hardly be transformed unless development is democratic, and supported by popular participation." 88/

81/ Final Act of the International Conference on Human Rights (United Nations publication, Sales No. E.68.XIV.2), Resolution XVIII, pp. 14-15, para. 3.

82/ General Assembly resolution 2542 (XXIV), article 22(b).

83/ Report of the World Population Conference, op. cit., p. 7, para. 14(b).

84/ Ibid., resolution XVI, para. (a).

85/ E/CN.9/348 (1980) para. 52.

86/ Ibid., para. 53.

87/ Ibid., para. 58.

88/ E. Laszlo et. al., The Obstacles to the New International Economic Order (New York, Pergamon, 1980) p. 93.

45. In addition to requiring that coercion be avoided, the principles underlying the right to development also serve to emphasize the importance of promoting general socio-economic progress in order to achieve whatever form of demographic transition may be desired. This approach was strongly endorsed by the World Population Conference and has been supported by a wide range of research findings. ^{89/} Thus, based on a very extensive review of the literature of the interrelationships between population and development in developing countries, one commentator concluded that "the resolution of population problems may well lie in fundamental changes in society, removing the obstacles to ... development". ^{90/} Nevertheless, a recent report by the Secretary-General has observed that despite considerable interest in recent years in the possible effects of intervention with regard to the socio-economic factors determining fertility, such as education, health, employment, income distribution, the status of women and agrarian reform, "there have been no marked changes in government practice since Bucharest [1974] as regards the deliberate taking into account in development strategies of the demographic effects of a given macroeconomic intervention or social measure". ^{91/}

(c) Morbidity, mortality ^{92/} and human rights

46. The World Population Conference recommended that the reduction, through national and international efforts, of very high rates of mortality and morbidity, should be a matter of the highest priority in the context of societal change. ^{93/} The Plan of Action also stressed the need to reduce national and subnational differentials therein and recommended the pursuit of specific goals relating to, inter alia, reduced infant and maternal mortality, improved nutrition, and the reduction of mortality from social and environmental factors. ^{94/} The link between these objectives and realization of the right to development was emphasized at the Amsterdam Symposium:

"High morbidity and death rates, malnutrition, starvation and inadequate health services were considered as obstacles to sustained development and adequate fulfilment of human rights." ^{95/}

47. The Symposium also noted a number of other human rights issues which arose in the context of endeavours to reduce morbidity and mortality. ^{96/} These included:

(a) The problems associated with increasing life span and particularly with the extraordinarily costly methods now available for keeping persons "alive";

(b) The question of whether the individual should have the right to die with dignity;

(c) Questions concerning the ethical problems of experimenting with human beings.

^{89/} See for example, Philip M. Hauser (ed.), op. cit.

^{90/} Robert H. Cassen, "Population and Development: A Survey", World Development, Vol. 4, 1976, pp. 785-830.

^{91/} E/CN.9/348, para. 57.

^{92/} Information on recent trends relating to morbidity and mortality is contained in E/CN.9/347 (1980) paras. 50-63; and E/CN.9/348 (1980) paras. 16-29.

^{93/} Report of the World Population Conference, op. cit., chap. I, para. 20.

^{94/} Ibid., para. 24.

^{95/} Report of the Symposium on Population and Human Rights, op. cit., para. 71.

^{96/} Ibid., paras. 85-87.

48. More recently, a Second Symposium on Population and Human Rights was held at Vienna from 29 June to 3 July 1981. In a Secretariat paper submitted to the Symposium it was noted that, by and large, the leading issues in this area have not changed significantly in recent years. ^{97/} In the same paper it is stated that resource limitations require the selection of priorities, a process which in turn has consequences for the rights of those affected. As the paper concludes, it is essential that "the human rights implications of any policy initiative be dealt with consciously, and with the participation of all concerned, whatever the direction or emphasis". ^{98/}

(d) Internal migration ^{99/} and the right to development

49. Geographic distribution and migration within the boundaries of a particular state give rise to population issues which are of considerable importance in terms of the right to development. From the individual's viewpoint, internal migration might be considered essential as a means to realization of his potential through better access to job opportunities, more favourable climatic or environmental conditions, or for ethnic, racial, cultural, social or other reasons. ^{100/} Yet the exercise of the individual's "right to liberty of movement and freedom to choose his residence" ^{101/} may not be in accord with the broader development objectives of Governments. Thus a United Nations survey of 165 countries indicates that only 19 countries consider their situation as regards internal migration to be "acceptable". ^{102/} Of 79 countries which termed their situation "largely unacceptable", 75 were developing countries. Among the reasons given for this attitude are the following: one of the direct effects of demographic transition has been the creation of a surplus rural labour force which has provided an apparently inexhaustible supply of migrants for urban centres, not to mention the existence of inadequate legal, economic and social structures in rural areas; the colonial legacy has often left urban structures and regional divisions which are not very conducive to economic and social development; finally, for reasons which are purely incidental from the point of view of optimal geographical distribution, some countries have been provided with industrial infrastructures which do not contribute to the harmonious development of their territory. ^{103/}

50. The need to achieve a satisfactory balance in relation to internal migration between the right to development of the individual and that of the community was noted by participants in the first Symposium on Population and Human Rights. ^{104/} Participants considered the need for, and justification of, coercion in the implementation of policies designed to stem the influx of migrants from rural to

^{97/} "Population trends and policies since 1974 in relation to human rights", IESA/P/AC.16/7 (1981) p. 13.

^{98/} Ibid.

^{99/} See generally E/CN.9/348 (1980) paras. 59-75.

^{100/} See generally "Rapport du colloque sur les droits de l'homme en milieu urbain, Paris, 8-11 décembre 1980", UNESCO doc. SS-80/CONF.807/COL.6.

^{101/} International Covenant on Civil and Political Rights, article 12 (1).

^{102/} E/CN.9/348, para. 59.

^{103/} E/CN.9/324, para. 41.

^{104/} Op. cit., para. 100.

urban areas. It was suggested that some provision for coercion should be made if and when it should become necessary, and that the State might deem it desirable to formulate legal norms for the regulation of migration in the interest of the general welfare of the community. These views did not, however, find favour with a majority of the participants. Another view expressed by some participants was that coercive measures might often be impracticable and indeed counterproductive. It was urged that legal or administrative impediments to freedom of movement might retard long-term development. Non-coercive measures designed to absorb the impact of internal migration and to influence the volume and direction of its flow would be more appropriate. Such measures would not infringe on the right to freedom of movement and residence within the borders of each State.

51. The World Population Plan of Action recommended that, in formulating and implementing internal migration policies, Governments should consider a number of guidelines, one of which provides that:

"Measures should be avoided which infringe the right of freedom of movement and residence within the borders of each State as enunciated in the Universal Declaration of Human Rights and other international instruments." 105/

In practice, however, as noted in a recent Secretariat report, in recent years there has been "in a number of countries instances of forced expulsions of urban populations or other forms of compulsory resettlement at times carried out with great harshness". 106/ As stated in the same report, these occurrences underline the need to consider that additional steps might be taken to promote respect for the right of everyone to freedom of movement and residence within the borders of each State. Similarly it is important that strategies relating to population development and distribution should be designed with reference to human rights criteria. "Frequently, such policy development efforts are carried out in a rather technocratic context, with comparatively little attention given to human rights. It may be useful to consider whether and how the concern could be made more explicit". 107/

4. Cultural values and the right to development

(a) Introduction

52. In the view of one commentator, "the United Nations has sometimes lost sight of the essential cultural dimension" of development. 108/ Nevertheless, the right to culture in all its aspects has consistently been affirmed in a variety of

105/ Op. cit., para. 46(a).

106/ "Population trends and policies since 1974 in relation to human rights", IESA/P/AC.16/7 (1981) p. 27.

107/ Ibid., p. 29.

108/ In paragraph 1 of its resolution 1981/17 the Economic and Social Council reaffirmed "that cultural development is one of the most important factors of social progress".

normative instruments adopted within the United Nations framework and its central importance has received increasing recognition in recent years. ^{109/} Thus for example the right of everyone to take part in cultural life, which is contained in Article 15 (1) of the International Covenant on Economic, Social and Cultural Rights, has been spelt out more fully in instruments such as the 1966 Declaration of the Principles of International Cultural Co-operation ^{110/} and the 1976 Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It. ^{111/} The latter instrument is of particular importance not only because of its breadth of scope and detail but because of the fundamental links that are established between respect for human rights and participation in cultural life. For the purposes of the Recommendation the phrase "access to culture" means "the concrete opportunities available to everyone, in particular through the creation of the appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding, and for enjoying cultural values and cultural property". ^{112/} Similarly the phrase "participation in cultural life" is taken to mean "the concrete opportunities guaranteed for all - groups or individuals - to express themselves freely, to communicate, act, and engage in creative activities with a view to the full development of their personalities, a harmonious life and the cultural progress of society". ^{113/}

53. It is of particular relevance in the context of the right to development to note that the Recommendation relates free participation in cultural life to the following factors:

- (a) A development policy for economic growth and social justice;
- (b) A policy of life-long education which is geared to the needs and aspirations of all people ...;
- (c) A science and technology policy inspired by the resolve to safeguard the cultural identity of the peoples;
- (d) A social policy directed towards progress and, more precisely, the attenuation - with a view to their elimination - of the inequalities handicapping certain groups and individuals, especially the least privileged, in regard to their living conditions, their opportunities and the fulfilment of their aspirations;
- (e) An environment policy designed ... to create a background to living conducive to the full development of individuals and societies;

^{109/} Mohammed Bedjaoui, Towards a New International Economic Order (Paris, UNESCO, 1979) p. 73.

^{110/} Proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 4 November 1966. See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.78.XIV.2) p. 129.

^{111/} Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 26 November 1976.

^{112/} Part I, para. 2(a).

^{113/} Part I, para. 2(b).

(f) A communication policy designed to strengthen the free exchange of information, ideas and knowledge ...; and

(g) A policy for international co-operation based on the principle of equality of cultures, mutual respect, understanding and confidence and strengthening of peace. 114/

54. The importance of cultural development in connection with the right to development has also been noted in the relevant debates of the Commission on Human Rights. 115/ However, in the present study it is not proposed to duplicate the research and analysis which has been done elsewhere on the right to culture, notably by UNESCO. 116/ Rather, it is proposed, within the limited space available, to concentrate on two closely related aspects of the relationship between the right to development and cultural values. They concern the impact of alien cultural values and the issue of life-styles. This focus cannot be taken to imply that the impact of endogenous cultural values is not also of very major importance for the right to development in terms both of a potentially positive and a potentially negative impact. 117/ It is not possible, however, to explore these complex and sensitive issues in the present report. It may be that further attention could be devoted to these matters by the Commission on Human Rights in the course of its future work.

(b) The impact of alien cultural values

55. In recent years a wide range of sources has noted the deleterious impact on development which can result from the adoption of alien or inappropriate cultural values, especially by developing countries. Thus a 1979 United Nations symposium on interrelations among resources, environment, population and development held in Stockholm noted that "mass communications media, activities or transnational corporations and other features of international relations cause developing countries to adopt patterns, strategies and methods of development which are not necessarily appropriate to meet their genuine needs". 118/ Other consequences of the dissemination of distorted cultural values were referred to in the conclusions adopted by the United Nations seminar on political, economic, cultural and other factors underlying situations leading to racism including a survey of the increase or decline of racism and racial discrimination, held in Nairobi from 19 to 30 May 1980. Thus it was stated that "cultural arrogance and the destruction of indigenous cultures often contributed to the spread of racism and racial discrimination". 119/

114/ Part I, para. 3(d).

115/ Official Records of the Economic and Social Council, 1980, Supplement No. 3 (E/1980/13) para. 116; and Official Records of the Economic and Social Council, 1981, Supplement No. 5 (E/1981/25) para. 117.

116/ See for example UNESCO's reports to the General Assembly on "The preservation and further development of cultural values" contained in A/35/349, annex; A/33/157, annex; and Cultural Rights as Human Rights (Paris, UNESCO, 1970).

117/ See generally The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress, op. cit., chap. IV and The Right to Self-Determination: Historical and Current Development on the basis of United Nations Instruments. Study prepared by Aureliu Cristescu, (United Nations publication, Sales No. E.80.XIV.3), chap. VII.

118/ A/C.2/34/5, annex, para. 25.

119/ ST/HR/SER.A/7, (1980), para. 154.A (5).

56. The preservation and development of the cultural values and identities of particular communities and peoples must be an important element in strategies designed to promote realization of the right to development at the national level. This was implicitly acknowledged in the Political Declaration adopted by the Sixth Conference of Heads of State or Government of Non-Aligned Countries held in Havana in 1979. In their Declaration, in which they emphasized the importance of the right to development, 120/ they also noted with concern that

"in this age of ultra-modern technology, the penetration of deleterious cultural values which accompany the vastly increasing flow of communication from outside the non-aligned countries, if not properly checked and sorted out, could in the long run jeopardize the cultural values and cultural identities of the non-aligned countries as the recipient countries in this context." 121/

57. Although a variety of factors contributes to this process, particular attention has been focused on transnational corporations (TNCs). According to one analysis TNCs act as transnational communication systems in transmitting socio-cultural preferences of rich, western industrialized societies to third world countries. Specifically it is claimed that "the TNCs promote a 'business culture' with certain value orientations and an ideal of a life-style geared to such attitudes, forms of corporate organization, product design and consumption patterns imitative of the rich countries". 122/

58. But while the role played by TNCs is of undoubted significance it is necessary to look for other causes as well. Thus, as Raul Prebisch noted in a statement to the Preparatory Committee for the New International Development Strategy in February 1980:

"It is sometimes said that the transnational corporations are introducing these patterns of consumption. Yes, the transnationals have worked hard and well from their standpoint, but they could not have created these patterns of consumption if great social inequality had not existed. These patterns of consumption took hold because the upper strata of the social structure appropriated, through the very functioning of the system, a large share of the fruits of technological progress. However, they did so not only for the sake of accumulating more, but largely for the sake of consuming more and better. That is the fundamental defect from the economic and social standpoint.

In my opinion, the privileged consumer society - and I state this categorically, after much thought and much observation - is absolutely incompatible with the social integration of those who have been bypassed by development, because the potential for accumulation which technological progress brought with it has been wasted." 123/

120/ A/34/542, annex, part I, para. 266(b).

121/ Ibid., para. 269.

122/ Karl P. Sauvant and Bernard Mennis, "Socio-Cultural Investments within the International Political Economy of North-South Relations: The Role of Transnational Enterprises", IPDA Dossier 12, October 1979, p. 79 (Nyon, International Foundation for Development Alternatives). See also, Transnational Corporations in Advertising SI/CTC/8 (1979).

123/ A/AC.196/15, pp. 2-3.

59. The importance of according equal respect, protection and promotion to all cultures was also emphasized in the Report of the Brandt Commission. In his introduction Willy Brandt notes that the technical nature of many modernization processes serves to underline the importance of conserving cultural identity and independence, or in other words, cultural self-determination. "It is imperative to find a balance between the chances offered by modern technology and the existence of individual peoples and regions which do not want to, and must not, lose their individuality". 124/

60. The importance of the preservation and development of local cultural values for realization of the right to development at the national level was clearly brought out in the Final Report of a UNESCO meeting of experts on the rights and duties deriving, for States and groups, from the establishment of a new international economic and cultural order, which noted "the decisive importance of cultural considerations in the establishment of a new order implies the need for cultural decolonization in countries of the third world, which goes hand in hand with the systematic enhancement of the national cultural heritage and action to ensure access by the people at large to modern cultural life and to encourage them to give expression to their artistic and cultural creativeness, and with the eradication of the structural bases and sources of racial discrimination and apartheid". 125/

(c) The issue of life-styles

61. In its 1979 report the United Nations Committee for Development Planning specifically addressed the issue discussed above. Their analysis and conclusion warrant quotation in the present study:

"Mere imitation of life-styles and development patterns evolved over a period of sustained development in other countries, often ahead of and even unrelated to the growth and expansion of production possibilities, can create serious problems. Neglect or destruction of national values and national identity creates social tensions, particularly if changes are not fully absorbed by a wide spectrum of the society, giving rise to isolated subcultures replacing social cohesion. We see in the world today a certain reaction to this and a search for alternative development patterns and life-styles which give more weight to human values and patterns of social relationship, seeking to integrate needed changes with the accepted value structure of individual developing countries. The economic and political implications - and viability - of such alternatives have, for the most part, yet to be explored. Our conviction, as a Committee, is that this growing emphasis on alternatives is of immense and fundamental importance for the future of all societies and needs to be encouraged and developed into constructive measures." 126/

62. The importance of the question of life-styles in the context of promotion of the right to development has been considered elsewhere. 127/ In the present context,

124/ North-South: A Programme for Survival (London, Pan, 1980) p.25.

125/ UNESCO document SS-78/CONF.604/13 (1978), Part IV, B.3 (b).

126/ Official Records of the Economic and Social Council, 1979, Supplement No. 7 (E/1979/37) para. 26.

127/ See Rajni Kothari, "Human Rights as a North-South Issue" and Asbjørn Eide, "Choosing the Path to Development: The Impact for Human Rights", both in Bulletin of Peace Proposals, Vol. 11, No. 4, 1980, pp.331 and 349 respectively.

it is not proposed to duplicate these analyses but rather to suggest some of the conclusions to which they give rise. These include the following:

(a) The problem of maldevelopment in the industrialized countries requires serious consideration as an obstacle to realization of the right to development in those countries; 128/

(b) There is a strong case, in terms both of international equity and ecological considerations, for the need to modify patterns and levels of consumption in the high-income industrialized countries; 129/

(c) The compatibility, especially in developing countries, of excessively affluent consumerist life-styles with efforts to promote balanced and equitable development patterns is questionable at best; 130/ and

(d) Full account must be taken of the importance of respecting human rights in any endeavours to modify life-styles.

5. The impact of militarization upon realization of the right to development at the national level

(a) Introduction

63. If there is one pervasive theme which runs through many of the problems and issues which have been dealt with by the Commission on Human Rights, but which has not been specifically addressed in its own right, it is the problem of militarization. It has arisen in connection both with the study of particular situations involving human rights violations and with the consideration of broad subject areas ranging from torture and the phenomenon of enforced or involuntary disappearances to human rights and scientific and technological developments, genocide, apartheid, racism and racial discrimination, conscientious objection to military service and the declaration of states of siege or emergency. In the present context the issue of militarization warrants specific consideration since it often constitutes one of the most significant obstacles to realization of the right to development at the national level.

125/ Thus, for example, "'malnutrition of affluence', i.e. disorders due to overnutrition, is now one of the major health, social and economic problems of the industrialized countries". Sixth Report on the World Health Situation 1973-1977 (Geneva, WHO, 1980) Part I, p.143. It is also common in the upper socio-economic strata of the developing countries. Ibid., p.142.

129/ See Report of UNEP/ECE Regional Seminar on Alternative Patterns of Development and Lifestyles, Ljubljana, Yugoslavia, 3-8 December 1979, ENV/SEM.11/2 (1979), and Report of the United Nations World Population Conference, 1974, Bucharest, 19-30 August. (United Nations publication, Sales No. E.75.IXXX.3), Resolution VIII, pp.36-37.

130/ Social Development and the International Development Strategy (Geneva, UNRISD, 1979) pp.12-13; Ramashray Roy, Alternative Ways of Life in India: Pollution of Poverty or Bane of Affluence, United Nations University, Project on Goals, Processes and Indicators of Development (GPID) document HSDRGPID-45/UNUP-159, p.22; and a large number of other GPID papers on "Alternative Ways of Life".

64. In its Declaration of the 1980s as the United Nations Second Disarmament Decade, the General Assembly declared that "peace and development are indivisible". 131/ The international dimensions of the right to peace in relation to the right to development have been considered in Part One of the present study and in an earlier report of the Secretary-General. 132/ But while a number of sources, including in particular the Declaration on the Preparation of Societies for Life in Peace, 133/ has dealt with the international dimensions of the right to peace, very little consideration has been given to its equally important national dimensions. As one commentator has noted, "in the internal aspect, this right... continues to exist merely in the sphere of ideology and of moral and political recommendations". 134/

65. At the very least, at the national level, the right to peace must be interpreted as embracing the right to be free from militaristic practices and to live in a society which is not dominated by processes of militarization. It is equally clear that realization of the right to development at the national level is incompatible with many, if not most, aspects of militarization. In the present section the concept of militarization is considered, its pervasiveness as a phenomenon is noted, and its impact on national efforts to promote the right to development is analysed.

(b) The concept of militarization 135/

66. There is no single universally accepted definition of terms such as militarism and militarization. Yet there would seem to be substantial agreement as to the general thrust of such concepts. 136/ According to one writer militarism can be defined as "the tendency of a nation's military apparatus (which includes the armed forces and associated paramilitary, intelligence, and bureaucratic agencies) to assume ever-increasing control over the lives and behaviour of its citizens; and for military goals (preparation for war, acquisition of weaponry, development of military industries) and military values (centralization of authority, hierarchization, discipline and conformity, combativeness, and xenophobia) increasingly to dominate national culture, education, the media, religion, politics, and the economy at the expense of civilian institutions". 137/ Another author has defined militarism by reference to such symptoms as "a rush to armaments, the growing role of the military (understood as the military establishment) in national and international affairs, the

131/ General Assembly resolution 35/46 Annex, Part III, D.

132/ E/CN.4/1421, paras. 39-65 and E/CN.4/1334, paras. 130-151 and 219-229 respectively.

133/ General Assembly resolution 33/73.

134/ Adam Lopatka, "The Right to Live in Peace as a Human Right", Bulletin of Peace Proposals, Vol. II, No. 4, 1980, p.365.

135/ See generally Ashbjørn Eide and Marek Thee (eds.), Problems of Contemporary Militarism (London, Croom Helm, 1980).

136/ A variety of definitions is contained in Kjell Skjelsbaek, "Militarism, its Dimensions and Corollaries: An Attempt at Conceptual Clarification" Journal of Peace Research, Vol. XVI, No. 3, 1979, pp.213-229.

137/ Michael T. Klare, "Militarism: The Issues Today", Bulletin of Peace Proposals, Vol. 9, No. 2, 1978, p.121.

use of force as an instrument of prevalence and political power, and the increasing influence of the military in civilian affairs". 138/ In another study, militarization was defined as "the process whereby military values, ideology and patterns of behaviour achieve a dominating influence on the political, social, economic and external affairs of the State, and as a consequence the structural, ideological and behavioural patterns of both the society and the government are 'militarized'". 139/

67. On the basis of these definitions two conclusions may be drawn in the present context. First, militarization is a far more pervasive and complex phenomenon than the arms build-up per se and thus a focus on disarmament issues constitutes only a partial and therefore inadequate response to the problem. Secondly, any analysis of the factors which either promote or inhibit realization of the right to development at the national level must take full account of the implications of militarization. By the same token, care must be taken to distinguish between the phenomena of militarism and militarization on the one hand, and the legitimate role of the military on the other hand.

(c) World military spending

68. While the impact of militarization within a particular society is pervasive and cannot be adequately assessed on the basis of specific statistical information, over-all military spending levels do provide some general indications. Although available data are imprecise and estimates vary considerably, one source has estimated that world military expenditure in 1980, in current dollars, was in excess of \$500,000 million, or roughly 6 per cent of total world output. 140/ Over-all military spending in real terms has increased four-fold since the end of the Second World War.

69. In addition to alarming increases in military expenditures by the industrialized countries, and particularly the great powers, third world military spending has also risen substantially in recent years. According to the 1980 Stockholm International Peace Research Institute Yearbook, "in the past 20 years, Third World GNP increased about 3 times, while military spending increased about 4.5 times". 141/ Similarly the World Bank's World Development Report 1980 notes that "the proportions of GNP that industrialized and developing countries devoted to it were rather similar ... For industrialized countries, the outlay on arms was 17 times higher than that on aid. And for developing countries, it was one-and-a-half times more than on education and health combined". 142/ The following table, taken from the World Bank's report, provides some indication of the magnitude of present world expenditure on military, as compared to, specific developmental objectives:

138/ Marek Tsee, "Militarism and Militarization in Contemporary International Relations", Bulletin of Peace Proposals, Vol. 8, No. 4, 1977, p.296.

139/ Commission of the Churches on International Affairs, Report of the Consultation on Militarism held at Glion, Switzerland, 13-18 November 1977 (World Council of Churches, Geneva, 1978), p.3.

140/ World Armaments and Disarmament, SIPRI Yearbook 1980 (London, Taylor and Francis for the Stockholm International Peace Research Institute, 1980), p.XVII.

141/ Ibid., page XIX, See also Asbjørn Eide, "Arms Transfer and Third World Militarization", Bulletin of Peace Proposals, Vol. 8, No. 2, 1977, p.99.

142/ Op.cit., n. 4, p.29.

Public expenditures on defense, aid, health and education, 1977
(Percentage of GNP)

Country group	Defense	Aid	Health	Education
Industrialized countries <u>a/</u>	5.6	0.33	3.0	5.9
Developing countries <u>b/</u>	5.9	n.a.	1.0	2.7

Source: World Military Expenditures and Arms Transfers 1968-1977
(US ACDA) 143/

a/ Include centrally planned economies.

b/ Include centrally planned economies and capital-surplus oil-exporters.

70. In addition to these and other statistical indicators of militarization a number of comparative country studies have been undertaken on aspects of militarization. 144/ In so far as the present study is concerned primarily with the obstacles to realization of the right to development in developing countries it is relevant to note: that the vast majority of wars since 1945 have taken place in poor countries; 145/ that third world countries have experienced a large number of military-led or supported coups; 146/ that their military expenditures are increasing; that a high proportion of the technology imported by third world countries is military-related; 147/ and that developing countries have been estimated to be receiving 85 per cent of the world's weapons transfers. 148/ It should not be assumed, however, that the factors which have contributed to these developments are exclusively internally generated within the countries and regions concerned. 149/

143/ Ibid. See also Ruth L. Sivard, World Military and Social Expenditures 1979 (New York, Institute for World Order, 1979).

144/ See U. Albracht et.al., A Short Research Guide on Arms and Armed Forces (London, Croom Helm, 1978); and the annotated bibliography contained in Mary Kaldor, "The Military in Development", World Development, Vol. 4, No. 6, 1976, pp.459-482.

145/ Ibid., p. 459.

146/ See for example Samuel Decalo, Coups and Army Rule in Africa: Studies in Military Style (New Haven, Yale University Press, 1976).

147/ Kaldor, op.cit., p. 459. See also Kaldor, "The Significance of Military Technology", Bulletin of Peace Proposals, Vol. 8, No. 2, 1977, p.121.

148/ "The Impact of Militarization on Development and Human Rights: Statement by the Study Group on Militarization of the International Peace Research Association", Bulletin of Peace Proposals, Vol. 9, No. 2, 1978, p.176.

149/ For example, it has been argued that some aspects of militarization are encouraged by industrialized countries in order to sustain the existing global division of labour. See Michael Randle, "Militarism and Repression", Alternatives, Vol. VII, No. 1 (1981) pp. 61-144.

(d) The impact of militarization on the right to development

71. In his updated report on Economic and Social Consequences of the Arms Race and of Military Expenditures the Secretary-General states that "contemporary military institutions are often such powerful and pervasive parts of society that they can have a considerable impact on political and social conditions and perceptions and can place important constraints on the evolution of societies. In this sense they can represent a major social force, influencing the social, political and ideological development of a country". ^{150/} It is clear therefore that military institutions, and the policies and practices with which they are associated, can make a very major impact on the realization or non-realization of the right to development at the national level. The precise nature of that impact will inevitably vary very considerably according to circumstances, the social framework, economic conditions and the political context. While generalizations are thus to be avoided as far as possible, it is necessary in the present study to seek some understanding of the obstacles to realization of the right to development which may be erected by a process of militarization within a society.

72. Within the confines of this chapter it is possible only to touch briefly on some of the causes of militarization, some of the rationales offered for it, and the impact it can have in terms of the right to development.

(i) Some causes of militarization

73. The process of militarization in a particular society is fuelled by both internal and external factors. Some of the latter have been dealt with in earlier studies of the right to development although mention should also be made of the influence of pressures generated by the existing international division of labour. Thus in order to attract the benefits of international capital, an adequate supply of cheap and compliant labour may be required and this in turn may be secured through repressive measures and the maintenance of poor social conditions. ^{151/} Other relevant international factors include the armaments race and its many implications, the quest for spheres of influence by some developed as well as some developing countries, and the extension of theories of national security to embrace areas which lie far beyond national borders. ^{152/}

74. Among the internal causes of militarization the following may be noted:

(a) The according of a dominant role in society to the armed forces and acceptance of the notion that they are best equipped to perform a range of traditionally non-military functions;

^{150/} United Nations publication, Sales No. E.78.IX.1, para. 117.

^{151/} See generally André Gunder Frank, Crisis in the Third World (New York, Holmes and Meier, 1980), chap. 6; and David Collier (ed), The New Authoritarianism in Latin America (Princeton, Princeton University Press, 1979).

^{152/} See Economic and Social Consequences of the Arms Race and of Military Expenditures, Updated report of the Secretary-General, *op.cit.*.

(b) A narrow concern with the military at the expense of the political, social and economic dimensions of national security;

(c) The maintenance of unjust social and economic structures which provide an overriding incentive to certain groups to seek to maintain the status quo;

(d) the pursuit of racist and other forms of discriminatory policies; the cultivation of militaristic and thus non-democratic cultural, religious and social attitudes;

(e) The fostering, through education and other means, of ideologies conducive to the spread of militarization;

(f) The concentration of power and/or influence in the hands of a military-industrial-political complex; and

(g) The economic profitability of arms exports. 153/

(ii) Some rationales for militarization

75. In order to better understand the impact of militarization on the right to development it is useful to note some of the rationales or justifications which frequently lie behind policies and practices which facilitate the emergence and growth of militarism. They include, but are not limited to, the following three.

(a) Militarization to promote rapid and efficient development

76. Some commentators have sought to depict military régimes as benevolent and progressive and dedicated to the rapid transformation of their societies and the purge of corrupt civilian autocracies. 154/ While the reality clearly differs from one situation to another, there is now strong empirical support for the conclusion that while the short-term impact of military régimes may sometimes be perceived to be favourable, the long-term consequences for human rights are highly unfavourable. 155/ As a report of the International Peace Research Association concluded:

153/ Ibid.; Report of the Consultation on Militarism, op.cit., and Michael Klare, "Militarism: The Issues Today", Bulletin of Peace Proposals, Vol. 9, No. 2, 1978, pp.121-128.

154/ According to one author military régimes are "the most efficient type of organization for combining maximum rates of modernization with maximum levels of stability and control", Marion J. Levy, Modernization and the Structure of Societies (Princeton, Princeton University Press, 1966), p.603.

155/ See Bhabani Sen Gupta, "The Modernising Soldier: End of a Myth", Bulletin of Peace Proposals, Vol. 10, No. 3, 1979, p.269; S. Huntington, "Political Development and Decay", in H. Bienen (ed), The Military and Modernization (Chicago, Chicago University Press, 1971); E. Nordlinger, "Soldiers in Mufti: The Impact of Military Rule upon Economic and Social Change in the Non-Western States", American Political Science Review, December 1970, p.1131.

"Heavy-handed policies and coercion in a society controlled by the military can bring about substantial changes. But only in the very short run can this be regarded as an improvement: in the longer run, the political perversion and the prevention of participation will stultify the development of that society." 156/

Even the notion that stability is brought by a military régime is generally illusory. One commentator has observed that the longer the military is in power, the grimmer the struggle between the armed forces and the civilian population and the greater the changes of internal war and/or violent revolution. 157/

77. However, in the final analysis, the notion that rapid and efficient development can best be achieved through a process of militarization is incompatible with the fundamental importance attached to the concept of broad-based popular participation both in accordance with human rights principles in general and with specific reference to the right to development. 158/ Experience has shown that the principles of participation, self-reliance and accountability, all of which are central to promotion of the right to development at the national level, are generally downplayed, if not totally ignored, by military régimes. 159/ In such circumstances development in its fullest sense, as implied by the concept of the right to development, cannot be achieved.

(b) Militarization as a solution to economic problems

78. This rationale is used in two general contexts. The first relates to armaments production and the second to the creation of an economic climate which is attractive to foreign capital. The former has been dealt with at length elsewhere by the Secretary-General:

"Growing expenditure on armaments is not an efficient way of combating recession. Expenditures on such items as education, health, housing and social welfare are more effective means for both economic and social reasons. First, the maintenance of high and rising armaments expenditures in the face of stagnating or falling government revenues may lead countries to economize in such areas as health, education and welfare with all the negative social consequences this entails. Second, since in recent times recession tends to go hand in hand with high rates of inflation ("stagflation") and, in some cases, with heavy balance-of-payments deficits, high arms expenditures have proved to be a hindrance for economic policies leading out of recession". 160/

156/ Op.cit., p.177.

157/ Sen Gupta, op.cit., p.270.

158/ See chapter VIII, infra.

159/ Thus in its 1978 Annual Report the Inter-American Commission on Human Rights recommended adoption, "in those countries where there are still de facto régimes..., of measures for prompt reinstatement of a system of representative democracy, which is the system that best ensures full observance of the fundamental rights and liberties of man", OAS document OEA/Ser.L/V/II.47, document 13, revision 1 (1979) p.26.

160/ Op.cit., para. 86.

In connection with unemployment the same report notes that "there is rapidly accumulating evidence that high military budgets instead of alleviating over-all unemployment contribute substantially to it". 161/

79. The second context in which militarization is tried as a solution to economic problems is where the suppression of inflation, labour unrest and political instability by the military is seen as a means to foster investor confidence and thereby attract both foreign private investment and improved access to international public capital. 162/ The logic underlying such an approach is concerned more with aggregate economic growth for its own sake than with the promotion of the right to development of all persons.

(c) National security as a rationale for militarization

80. In general terms, national security concerns the capacity of a State to defend itself against internal and external threats to its order. Its importance in relation to national development is noted in the report of the Group of Governmental Experts on the relationship between disarmament and development:

"The problems of nation-building are exacerbated by perceived threats emanating from the external environment, creating an overriding preoccupation with national security which, for all societies, irrespective of their level of development, constitutes the strongest single stimulus for military spending." 163/

In addition to increased military spending, the concern to protect national security has, on occasion, given rise to a number of other developments which are prejudicial to realization of the right to development. Thus during debates in the Commission on Human Rights in 1981 "some representatives expressed concern that certain governments invoked national security in carrying out acts which violate human rights; violations of human rights could not be justified or excused by such reasons". 164/ The nature of such violations varies from country to country and from situation to situation. Nevertheless it is possible to identify certain approaches which give rise to concern from the perspective of the present report.

81. With respect to its external dimensions, national security is frequently cited in an attempt to justify activities which contribute to the arms race. As noted in a 1981 study on the relationship between disarmament and international security, interpretation of "national security" and "vital national interests" in ways that condone the use or threat of the use of force against the territorial integrity of other States, interference in their internal affairs and the projection of national security interests to the territory of other States constitutes an alarming example of this. Another example is the use of this interpretation to deny the right to self-determination and independence to peoples under colonial and foreign domination." 165/ In other matters the pursuit of national security policies

161/ Ibid., para. 97.

162/ R. Falk, "Militarization and Human Rights in the Third World", Bulletin of Peace Proposals, Vol. 8, No. 3, 1977, p.221.

163/ A/36/356 (1981) para. 218.

164/ Official Records of the Economic and Social Council, 1981, Supplement No. 5, (E/1981/25) para. 244.

165/ A/36/597, para. 18.

will often involve efforts to maintain the status quo, however repressive, undemocratic or inequitable it may be. 166/ Such policies are clearly strongly detrimental to promotion of the right to development at the international level.

82. With respect to its internal dimensions, the means by which national security is sought vary considerably both in theory 167/ and in practice. In so far as national security is treated as being synonymous with internal security, concern has been expressed at the extent to which military and police methods and functions may be fused together. In the view of one commentator this process "has taken the form, partly under pressure of urban guerilla activities, of joint police and military operations and the transfer of technologies for surveillance, data storage and population control developed in the first instance by the military". 168/

83. In certain parts of the world "national security" has also been developed in doctrinal terms to encompass, inter alia, a concept of total war which requires an all-embracing anti-subversive strategy in order to emphasize the central role of the power of the State in the political, economic, social and military spheres. 169/ One commentator has defined national security as the guarantee given by the State to achieve or defend national goals against existing hostilities and pressures. 170/ While there is no single definition of national security doctrine the following elements are usually prominent: 171/

(a) Nationalism is viewed as a substitute for ideologies and for political parties;

(b) Economic development, which is necessary for increased national power and thus security, is viewed as a goal per se without regard to its quality and the distribution of its benefits; and

(c) Security and "development" are primary objectives and dissent or subversion (very widely defined) must be eliminated.

84. The possible consequences for human rights of the application of some versions of this doctrine have been described by one commentator in these terms:

"Traditional democratic rights and constitutional guarantees are no longer regarded as the basis of the political system, but rather as a means by which

166/ Richard Barnet, Roots of War (New York, Atheneum, 1972) p.74.

167/ See generally, José-Antonio Viera-Gallo, "National Security Doctrines and Their Impact on Militarism and Human Rights", paper presented to Workshop on Militarism and Human Rights organized by the World Council of Churches, Commission of the Churches on International Affairs, in Glion, Switzerland, 10-14 November 1981.

168/ Michael Randle, op.cit., p.71. Cf. Report of the Symposium on the Role of the Police in the Protection of Human Rights, The Hague, 14-25 April 1980, ST/HR/SER.A/6.

169/ See generally Hernán Montealegre, La seguridad del estado y derechos humanos, (Santiago, Academia de Humanismo Cristiana, 1979).

170/ J.A. Amaral Gurgel, Seguranca e democracia (Rio de Janeiro, José Olympio, 1976).

171/ See, for example, José Comblin, Le pouvoir militaire en Amérique Latine: l'idéologie de la sécurité nationale (Paris, Delarge, 1977).

enemies can subvert the nation. Hence their exercise must be strictly controlled. It is no longer the constitution nor the laws that guarantee rights, but rather the State in the hands of the military. Related to this is a deep suspicion of majority rule, which is regarded as subject to manipulation ... Universal suffrage is also suspect, as are other claims for popular participation. In such a context political parties and other democratic mechanisms are regarded as incapable of contributing to the attainment of national goals." 172/

In such a context the concept of subversion may be almost unlimited and may be used to justify a counter-insurgency campaign which is ill-directed and random and in which respect for human rights is treated as a luxury to be dispensed with. 173/

85. From the perspective of the right to development, which is as much a prerogative of nations as of individuals within nations, the challenge is to achieve a mutually reinforcing balance between efforts to promote respect for human rights and efforts to ensure national security. In the final analysis internal national security can only be ensured when the rights of all citizens within the nation are respected.

(iii) The effects of militarization

86. The pervasiveness and complexity of the process of militarization make it virtually impossible within the limits of the present study to note all of its economic, social, political, cultural and psychological implications. Some of these have already been identified by the Secretary-General in the substantially narrower context of the arms race and military expenditures. 174/ They include: The diversion of domestically generated economic surplus away from development activities and into military projects; the diversion of much needed foreign exchange for the same purposes; the creation of large external debt burdens incurred in order to pay for arms imports; the consumption of vast quantities of natural resources for military purposes and the adoption of various policies designed to guarantee access to vital foreign resource supplies; 175/ the diversion of research and development resources to military rather than developmental projects; the emergence of a gross technological imbalance between military and non-military sectors, especially in developing countries; 176/ the reinforcement of dependence by developing countries on industrialized countries for technology, training and finance; and the diversion of skilled manpower to military rather than developmental purposes.

172/ Margaret E. Crahan, National Security Doctrine and Human Rights in Latin America: The Southern Cone (Washington, D.C., Working Paper of Woodstock Theological Center, 1980), p.17.

173/ See Viera-Gallo, op.cit., pp.9-10.

174/ Op.cit.

175/ See Helge Hveem, "Militarization of Nature: Conflict and Control over Strategic Resources and Some Implications for Peace Policies", Journal of Peace Research, Vol. XVI, No. 1, 1979, p.1.

176/ See M. Kaldor, A. Eide and S. Merrit, World Military Order: The Impact of Military Technology in the Third World, (London, Macmillan, 1979).

87. Militarism also leaves its stamp upon the social and cultural fabric of a nation. As one commentator has stated:

"A garrison society turns irresistible toward authoritarian methods; it promotes the centralization of society, the mystification of expertise, and repression of nonconformist styles and beliefs. Military preparations require unassailable secrecy, and thus, in the name of national security, the power of the military and the presidency grows, with a commensurate loss in self-government." 177/

Militarization, as the Secretary-General has noted elsewhere, often goes hand in hand with social tension. "As a means of domestic repression it is not least characteristic of countries where considerable social differences and extreme exploitation of large sectors of the population prevail". 178/ In other words, militarization and the right to development represent opposite extremes with a commitment to either one requiring the suppression of the other. As noted in the same report, the choice of the former goal at the expense of the latter provides no solution since "an increasing burden of military expenditures further delays economic and social progress, freezes social structures and exacerbates social tension". 179/ For these reasons it has been argued that "disarmament is a precondition for the realization of natural sovereignty and individual security". 180/

88. Moreover, militarization fosters and in turn is encouraged by the emergence of military-industrial or military-economic-political complexes, which are "powerful, resourceful and pervasive coalitions that have developed around one common purpose: the continued expansion of the military sector, irrespective of actual military needs" 181/ and, in general terms, irrespective of human rights requirements. 182/

(e) Conclusion

89. The process of militarization thus constitutes one of the most significant obstacles to realization of the right to development. It invariably entails heavy economic sacrifices; it frustrates the social and cultural aspirations of the people; it is essentially incompatible with the rule of law; and it undermines those principles such as accountability, participation and self-reliance, upon which the concept of the right to development is founded.

177/ M. Klare et.al., "Resurgent Militarism", in H. Sklar (ed.), Trilateralism: The Trilateral Commission and Elite Planning for World Management (Boston, South End Press, 1980), p.289.

178/ Economic and Social Consequences of the Arms Race and of Military Expenditures, op.cit., para. 121.

179/ Ibid., para. 122.

180/ Asbjørn Eide, "Militarization with a Global Reach" in Problems of Contemporary Militarism, op.cit., p.321.

181/ Ibid., para. 119.

182/ See Eric-Jean Thomas, "Les régimes militaires et les droits de l'homme" in Institut International des Droits de l'Homme, Résumé des cours, Neuvième session d'enseignement, 3-28 juillet 1978; and Nicole Ball, "The Military in Politics: Who Benefits and How", World Development, Vol. 9, No. 6 (1981) pp. 569-582.

90. It is therefore all the more striking that, while analyses of general human rights issues, and particularly those undertaken within the United Nations system, have recently begun to take greater account of development problems, relatively little attention has been focused upon the problem of militarization. 183/ This omission is particularly inappropriate in view of the extent to which all aspects of the enjoyment of human rights are fundamentally affected by the degree of militarization within any given society. If the deeper roots of human rights problems are to be tackled, and if adequate attention is to be given to the structures which promote and reinforce human rights violations, it is essential that issues related to militarization in all its aspects be analysed from the viewpoint of their impact on human rights. As the Secretary-General has stated elsewhere, "it should be noted that the military institution in the wide sense ... enjoys a unique position of strength in many societies". 184/

91. Thus, in so far as militarization constitutes one of the principal obstacles to realization of the right to development at the national level it is essential to seek a thorough understanding of the processes and factors which sustain it. In this regard, the Commission on Human Rights may wish to consider requesting the Secretary-General or a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a report on all aspects of the impact of militarization on respect for human rights, including the right to development. Such a request would also be in accordance with the recommendation adopted by the seminar on the relations that exist between human rights, peace and development, held in New York in August 1981, that "in particular, the relationship between militarization and human rights should be studied". 185/

92. In addition, consideration could be given to international and national measures which might deter or restrict the transfer of arms or other forms of technology which are capable of being (or are likely to be) used in the systematic violation of human rights. 186/ The use of such items for purposes of repression at the national level as well as their transfer at the international level is clearly incompatible with promotion of the right to development.

93. Finally the Commission, perhaps in conjunction with other relevant United Nations organs, may wish to consider the feasibility of establishing a system of registration of particular types of international arms transfers. While it is perhaps dispiriting to note that efforts to control the traffic in arms have been the subject of international consideration since at least 1887, and that conventions requiring the

183/ An important exception in this regard is the work undertaken by UNESCO. See for example, Medium-Term Plan (1977-1982), UNESCO document 19 C/4 Approved, paras. 2101-2129.

184/ Economic and Social Consequences of the Arms Race and of Military Expenditures, *op.cit.*, para. 118. This report touches only peripherally on the broader impact of militarization on human rights.

185/ ST/HR/SER.A/10, para. 219 (8)(a).

186/ See Steve Wright, "New Police Technologies: An Exploration of the Social Implications and Unforeseen Impacts of Some Recent Developments", Journal of Peace Research, Vol. XV, No. 4, 1978, p. 305; and Michael T. Klare, Supplying Repression, (New York, Field Foundation, 1977).

disclosure of details of arms transfers, with a view to alerting and mobilizing public opinion, were drawn up at St. Germain in 1919 and by the League of Nations in 1925, 187/ there would nevertheless seem to be strong reasons for considering, from a human rights point of view, the present day relevance of such approaches. These schemes would be concerned primarily with transfers of military, police and security technology, which is a field not presently dealt with directly in the context of disarmament negotiations. Attention could also be given to the means by which Article 36 188/ of the First Additional Protocol to the Geneva Conventions of 1949 relating to the protection of victims of international armed conflicts, could most effectively be promoted in the light of the international human rights obligations of States.

187/ See generally Wallace McClure, World Prosperity as Sought Through the Economic Work of the League of Nations (New York, Macmillan, 1933), pp. 553-60.

188/ Article 26 of Protocol I, as adopted in 1977, states: "In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party".

Chapter VIII METHODS AND POLICIES FOR PROMOTING REALIZATION OF
THE RIGHT TO DEVELOPMENT AT THE NATIONAL LEVEL

A. Introduction

94. In so far as the right to development represents a synthesis of all the rights proclaimed in the International Bill of Human Rights, its promotion at the national level requires the establishment and development of democratic systems and practices at all levels of society. Despite the fact that virtually all political régimes claim to be democratic in the sense that their mandate flows directly or indirectly from the popular will, it remains true that "the nations of the world live under a variety of political systems, of which some are totally or predominantly undemocratic, while others are essentially democratic - although a state of ideal democracy is nowhere to be found". ^{1/} Thus the democratization of institutions and decision-making processes, which is essential for realization of the right to development at the international level, ^{2/} is of equal importance at the national level.

95. In accordance with the mandate of the Commission on Human Rights this chapter focuses primarily on the importance of "participation by the masses in the definition and application of the development policy" ^{3/} as one of the single most important methods by which realization of the right to development at the national level can be promoted. Note is also taken of a variety of other relevant methods and policies.

B. The concept of participation and its relationship to human rights

96. In recent years a very considerable amount of research has been undertaken, especially within the United Nations system, on the subject of participation. ^{4/} Similarly the relationship between participation and the right to development has been the subject of a preliminary exploration in the report of the Secretary-General on the international dimensions of the right to development. ^{5/} In the present chapter it is not proposed to duplicate that work. It is sufficient to note that the central importance of participation in the development process has most recently been re-affirmed by the General Assembly in the International Development Strategy for the Third United Nations Development Decade which states that the "ultimate aim of

^{1/} Many Voices, One World (Paris, UNESCO, 1980), p. 166.

^{2/} E/CN.4/1334, para. 241.

^{3/} Commission on Human Rights resolution 7 (XXXVI), para. 2 (j), Commission on Human Rights Report on the Thirty-sixth Session Official Records of the Economic and Social Council, 1980, Supplement No. 3 (E/1980/13), p. 165.

^{4/} See for example Rural Employers' and Workers' Organisations and Participation (ILO, Geneva, 1979, doc. ACRD IX/1979/III); Popular Participation in Decision Making for Development (United Nations publication, Sales No. E.75.IV.10); Bernard van Heck, Participation of the Poor in Rural Organizations (Rome, FAO, 1979); Andrew Pearse and Matthias Stiefel, "Inquiry into participation - a research approach", UNRISD/79/C.14, Geneva, 1979, mimeo; and Rural Women's Participation in Development, UNDP Evaluation Study No. 3, (New York, 1980).

^{5/} E/CN.4/1334, paras. 230-253.

development is the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom". 6/ Similarly, the "substantial new programme of action for the 1980's for the least developed countries", adopted in September 1981, notes that "efforts must be expanded in order to ensure broadly-based participation in development". 7/

97. However, despite the extent to which popular participation has been emphasized in both national and international development strategies it has been said that, in practice, many "programmes continue to be managed by officials and authentic popular participation seldom occurs". 8/ Without seeking to list the reasons that could be put forward to explain this gap between theory and practice it is appropriate to acknowledge that the concept of participation is capable of many different interpretations and, partly for that reason, has on occasion been used to lend a veneer of respectability to methods and policies which are essentially undemocratic. In some cases, misuse or manipulation of the concept of participation is facilitated by definitions or analyses which either ignore or skate over the human rights dimensions of participation. Yet both at the theoretical and practical levels it is clear that respect for a range of specific human rights is a sine qua non for genuine and effective participation. As the General Conference of UNESCO has noted, participation of the people concerned is not only an end in itself but is also a means for the full enjoyment of human rights in general. 9/ The notion of human rights provides an objective and universally recognized basis for participatory policies. Moreover, respect, especially for civil and political rights, helps to ensure that the people concerned are free to respond in an appropriate manner to any method or policy which threatens to undermine their effective participation in decision-making.

C. Specific human rights which are of particular relevance to participation

98. In general terms, it is clear that the full and enduring realization of all human rights must be predicated upon the ability of people to participate in making the decisions which can control or alter the conditions of their very existence. In the absence of genuinely participatory structures and mechanisms a true spirit of respect for human rights cannot prevail. Thus exercise of the various rights to participate may be as crucial in ensuring satisfaction of the right to food as of the right to take part in public affairs.

99. The extent to which the concept of participation is reflected both explicitly and implicitly in many, if not all, of the major human rights instruments adopted by the international community has been noted elsewhere. 10/ In the present section it is proposed to note briefly the particular relevance of several specific rights in terms of promotion of participation as a central element in the right to development.

6/ General Assembly resolution 35/56, annex, para. 8.

7/ A/CONF.104/22, chap. I, para. 1.

8/ Pearse and Stiefel, op. cit., p. 3.

9/ Resolution 3/01, para. 3 (e) adopted by the General Conference of UNESCO at its twenty-first session, 1980.

10/ E/CN.4/1334, paras. 231-236; and Guy Kouassigan, "Le droit de participation aux affaires publiques; la décentralisation et l'équilibre entre la ville et la campagne", Revue Sénégalaise de droit, No. 22, December 1977, pp. 121-126.

1. The right to hold opinions and the right to freedom of expression

100. These rights, which are proclaimed in article 19 of the International Covenant on Civil and Political rights, are part of a group of rights which, when taken together, make up what has been termed the right to communicate. ^{11/} The implications of this group of rights including the role played by participation in promoting their realization, have recently been analysed in depth in the Report by the International Commission for the Study of Communication Problems. ^{12/} In its report the Commission, in considering individual human rights in the field of communication, emphasized the following:

(a) The right to know; to be given, and to seek out in such ways as he may choose, the information that he desires, especially when it affects his life and work and the decisions he may have to take, on his own account or as a member of the community. Whenever information is deliberately withheld, or when false or distorted information is spread, this right is infringed.

(b) The right to impart; to give to others the truth as he sees it about his living conditions, his aspirations, his needs and grievances. Whenever he is silenced by intimidation or punishment, or denied access to the channels of communication, this right is infringed.

(c) The right to discuss; communication should be an open-ended process of response, reflection and debate. This right secures genuine agreement on collective action, and enables the individual to influence decisions made by those in authority. ^{13/}

The commission also considered the importance of the individual's right to privacy, particularly in the face of modern developments in information technology. ^{14/}

2. The right to freedom of information

101. This right which, under the terms of article 19 of the International Covenant on Civil and Political Rights, is part of the right to freedom of expression, is clearly of central importance to promotion of the right to development at the national level. To the extent that people are unable to obtain ready access to information that concerns them, including for example the full details of relevant legislative and executive decisions, their prospects for realization of the right to development are likely to be impaired accordingly. Nevertheless, many barriers to freedom of information exist including: physical violence and intimidation; repressive legislation; censorship; blacklisting of journalists; banning of books; monopolies established by political action; bureaucratic obstructions; judicial obstructions such as closed hearings and contempt of court rules; parliamentary privileges; and restrictive professional practices. However, as the International Commission for the Study of Communication Problems has also noted,

^{11/} See, for example, Marc Paillet, "Le droit de communiquer", UNESCO doc. SS-80/CONF.806/10.

^{12/} Many Voices, One World (Paris, UNESCO, 1980), passim.

^{13/} Ibid., p. 113.

^{14/} Ibid.

"the absence of these blatant obstacles does not always mean that full freedom of information exists. Other obstacles include economic and social constraints and pressures; de facto monopolies (public, private, or transnational); inadequate infrastructures; narrow definitions of what is news, what should be published, and what issues should be debated; and a shortage of professional training and experience. Obstacles of this kind, too, limit the citizen's right to be informed and should be eliminated. Still other obstacles can arise from entrenched cultural attitudes and taboos, and from an unquestioning reverence for authority, whether secular or religious." 15/

Among the main conclusions adopted by the Commission was one to the effect that "freedom of information ... is a fundamental human right; indeed, a prerequisite for many others". 16/

102. The relevance of freedom of information to the right to peace and thus also to the right to development was also noted in the conclusions adopted by the United Nations seminar on the relations that exist between human rights, peace and development, held in New York in 1981. The seminar concluded that "people are entitled to information about the military policies and programmes of their Governments and their implications". 17/

3. Freedom of association

103. Acknowledged as a principle in the Preamble to the ILO Constitution of 1919 and reaffirmed, together with the principle of freedom of expression in the 1944 Declaration of Philadelphia, freedom of association has been called "an essential condition for steady advance towards the goal of social justice". 18/ As a right, it is proclaimed in article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights and has been elaborated upon in a variety of international instruments including notably the Freedom of Association and Protection of the Right to Organize Convention (No. 87) of 1948 and the Right to Organize and Collective Bargaining Convention (No. 98) of 1949, both adopted by the ILO. The relationship between freedom of association and the quest for economic development has been examined in depth elsewhere. 19/ In the present context it is appropriate to note that the right to freedom of association

15/ Ibid., p. 138.

16/ Ibid., p. 253.

17/ ST/HR/SER.A/10, para. 219 (b). Similarly see the address of the Director of the Division of Human Rights at the opening of the thirty-seventh session of the Commission on Human Rights, United Nations Press Release HR/992 of 2 February 1981, section III.

18/ The ILO and Human Rights, Report of the Director-General (Part I) to the International Labour Conference, fifty-second session, 1968, p. 32.

19/ Guy Caire, Freedom of Association and Economic Development (Geneva, ILO, 1977).

is of fundamental importance not only as regards industrial workers and employers but also with respect to the urban and rural poor. Thus the report of a recent UNESCO Colloquium on Human Rights in Urban Settings attached particular importance to the establishment of associations:

"It is through such associations that a marginal population can fend for itself and through them that creativity in handicrafts production is developed ... and cultural identity flourishes. The association is both a means of expression, a link between administrator and administered ... and an auxiliary to social services which are too extended to be able to identify all those in need. Associating private groups with urban government policy is a first step towards participation." 20/

104. In a rural context the importance of the right to freedom of association was illustrated in the following terms by a former Minister of Labour and Parliamentary Affairs of India in an address to the International Labour Conference:

"The experience of the last three decades has shown that the benefits of schemes and programmes designed for the rural poor are largely syphoned off by those who control the levers of power in agrarian society. Unless the landless agricultural labourer, the share-cropper, the artisan, the craftsman and the like are enabled to organize themselves as a strong countervailing force to wrest and retain the benefits meant for them, their position is not likely to improve in spite of laws on the statute book as well as the best intentions of the Government." 21/

Similarly, a recent FAO report notes that freedom of association frequently exists only formally on paper or not at all. Even where the right of free association is recognized by law, seldom is provision made for law enforcement, adequate safeguards and appeal mechanisms for rural workers". 22/ In the same vein an ILO report indicates that the right of association of the overwhelming majority of the workers among the rural poor in the developing world "is yet to be legally established in most of these countries". 23/ This situation thus represents a major obstacle to realization of the right to development at the national level since "sustained participation to achieve systematic progress in promoting the interests of rural workers can be secured only through organization". According to the same ILO report:

"Occasional participation in specific tasks, directly or through ad hoc representation in higher bodies, may be useful in the absence of organization but is no substitute for it. "Movements" and "mobilizations" may be useful in developing workers' consciousness, in bringing them together in action to

20/ Report of the Colloquium on Human Rights in Urban Settings, Paris, 8-11 December 1980, UNESCO document SS-80/CONF.807/9.

21/ International Labour Conference, Sixty-fourth session, Geneva, June 1978, Provisional Record, p. 11/4.

22/ Bernard van Heck, op. cit., p. 62.

23/ Rural Employers' and Workers' Organisations and Participation, ILO, Geneva, 1979, doc. ACRD IX/1979/111), p. 20.

promote their common interests, but no lasting benefit can be secured unless these initiatives are organized, or unless they lead to the formation of organizations where none existed. Without organization, they are liable to wither away." 24/

105. An indication of the methods and policies which may contribute to remedying this situation is contained in ILO Convention No. 141 and Recommendation No. 149, both adopted in 1975, and which relate to organizations of rural workers and their role in economic and social development. 25/ The Convention provides for the right of all categories of rural workers to establish and join organizations of their own choosing without previous authorization; active Government encouragement to these organizations for their growth and the pursuit of their lawful activities; the removal of legislative and administrative discrimination against such organizations and other obstacles to their growth; and steps to be taken to promote the widest possible understanding of the need to further the development of rural workers' organizations. Recommendation No. 149 advocates that rural workers should be associated with economic and social development action through strong and independent organizations capable of involving them in "the formulation, implementation and evaluation of programmes of rural development and at all stages and levels of national planning". It also recommends that such organizations should be able to promote and obtain access of rural workers to services such as credit, supply, marketing, transport and technology, and that they should play an active part in the improvement of general and vocational education and training in rural areas, including that connected with the activities of rural workers' organizations. The importance of the right to freedom of association was also emphasized in a recent "statement by a group of non-governmental experts" on the right to development. The group noted that "individuals and groups who are to benefit from the development process shall, in accordance with the right of association, be able to organize themselves whether as producers, as consumers, as disadvantaged groups or as citizens, both locally and nationally". 26/

4. The right to take part in the conduct of public affairs

106. Article 25 of the International Covenant on Civil and Political Rights proclaims, inter alia, the right of every citizen to "take part in the conduct of public affairs, directly or through freely chosen representatives". This right to political participation, as it has been called by the Inter-American Commission on Human Rights, 27/ is also an essential element to be included among the methods and policies required for realization of the right to development at the national level. In its 1980 report, the Inter-American Commission observed that "neglect of economic and social rights, especially when political participation has been suppressed, produces the kind of social polarization that then leads to acts of terrorism by and against the Government". As the Commission noted:

"The right to political participation leaves room for a wide variety of forms of Government; there are many constitutional alternatives as regards the degree of centralization of the powers of the State or the election and attributes of

24/ Ibid., p. 13.

25/ See ILO Official Bulletin, vol. LVIII (1975), Ser. A, No. 1.

26/ E/CN.4/AC.34/WP.10, para. 11.

27/ E/CN.4/1453, p. 142.

the organs responsible for the exercise of those powers. However, a democratic framework is an essential element for establishment of a political society where human values can be fully realized. The right to political participation makes possible the right to organize parties and political associations, which through open discussion and ideological struggle, can improve the social level and economic circumstances of the masses and prevent a monopoly on power by any one group or individual. At the same time it can be said that democracy is a unifying link among the nations of this hemisphere." 28/

107. In September 1981, the 68th Inter-Parliamentary Conference, in a resolution which, inter alia, emphasized that the right to development is a human right and stressed the necessity for international legal elaboration and codification of the right, pointed out "that new needs of political, economic and social development demand the constant promotion of existing forms of democratic rule and particularly stimulation of broad participation by citizens in the process of democratic decision-making". 29/

108. In considering the importance of full popular participation in the political process as an essential method for promotion of the right to development at the national and local levels it is necessary to note that the existence of formal mechanisms for participation does not necessarily provide any guarantee of genuine popular participation. Thus a recent report from the United Nations Research Institute for Social Development has noted that

"In societies where some formal elements of participation exist, the level actually permitted may be tacitly determined by class position or ethnic character; or perhaps the majority of the population may be granted token participation that serves the purposes of control rather than the sharing of responsibility and power; or they may be societies in which customary institutionalized participation won in past struggles has turned obsolete and ineffective and has been outflanked by new forms of manipulation and control, by discriminatory ideologies, or by the use of mass media, or by the hardening of bureaucratic arteries." 30/

In a similar vein the Final Report of the UNESCO expert meeting on human rights, human needs and the establishment of a new international economic order noted the technique of "offering apparent choices, e.g. through political parties, while in reality gravely restricting the ranges of questions that can be posed and answers which might be considered". 31/

5. Economic, social and cultural rights

109. The importance of participation in connection with realization of the rights contained in the International Covenant on Economic, Social and Cultural Rights has been noted in a 1969 report by the Secretary-General, 32/ and analysed in considerable

28/ Ibid.

29/ A/36/584, annex, pp. 16-19.

30/ Pearse and Stiefel, op. cit., p. 22.

31/ UNESCO doc. SS.78/CONF.630/12, para. 18.

32/ "Preliminary study of issues relating to the realization of economic and social rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights", E/CN.4/988, paras. 123-131.

depth by the Special Rapporteur of the Commission on Human Rights in his study on The Realization of Economic, Social and Cultural Rights: Problems, Policies and Progress. ^{33/} Although it is necessary within the confines of the present report to avoid duplication of these analyses, it must nevertheless be emphasized that enjoyment of rights such as the rights to food, health care and education, to mention only a few, is essential for the effective exercise of civil and political rights relating to participation. As noted below, in chapter IX, any suggestion that one set of rights deserves priority attention at the expense of the other set of rights is incompatible with the principle of interdependence and indivisibility of rights.

D. Other methods and policies for promoting realization of the right to development at the national level

1. General observations

110. As noted below in chapter IX, repression is inimical to the fostering of participatory development strategies and thus to promotion of the right to development. Yet it is sometimes against a background of a "culture of repression ... characterized by apathy, indifference, fatalism, fear of sanctions, restricted opposition and tactical defensiveness" ^{34/} that consideration is given to the question of promoting popular participation. The need for initiatives to achieve "true participation ... to be adapted through independent deliberative processes of the people concerned" ^{35/} cannot be met under such conditions. For this reason it has been suggested that unless structures of production and distribution in general are democratized governmental initiatives designed to mobilize popular participation in decision-making might encourage the expression of demands that cannot be satisfied in the short run and at the same time arouse politically unmanageable resistance from internal and external groups which might incur part of the associated costs. ^{36/}

111. In addition to being an integral part of over-all efforts to establish more equitable and democratic structures at all levels of society, efforts to promote popular participation as a means of realizing the right to development must respect fully the relevant cultural values of the people concerned. As one commentator has noted "participation means little unless the values and indigenous institutions of the people engaged in development efforts are respected by the authorities." ^{37/}

^{33/} United Nations publication, Sales No. E.75.XIV.2., passim.

^{34/} Charles D. Kleymeyer, quoted in Public Administration Institutions and Practices in Integrated Rural Development Programmes (United Nations publication, Sales No. E.80.II.H.2) p. 34, foot-note 78.

^{35/} ACC Task Force on Rural Development Report, quoted in Rural Employers' and Workers' Organisations and Participation, (ILO, Geneva, 1979, doc. ACRD/1979/111), p.13.

^{36/} Social Development and the International Development Strategy (Geneva, UNRISD, 1979) p. 7.

^{37/} Peter L. Berger, "Speaking to the Third World", Commentary, vol. 72, No. 4 (1981), p. 35.

112. In considering methods and policies for the promotion of the right to development at the national level it is important to bear in mind that "people cannot be developed; they can only develop themselves".

"For while it is possible for an outsider to build a man's house, an outsider cannot give the man pride and self-confidence in himself as a human being. Those things a man has to create in himself by his own actions. He develops himself by what he does; he develops himself by making his own decisions, by increasing his understanding of what he is doing, and why; by increasing his own knowledge and ability, and by his own full participation - as an equal - in the life of the community he lives in. ...

A man develops himself by joining in free discussions of a new venture, and participating in the subsequent decision; he is not being developed if he is herded like an animal into the new venture. Development of a man can, in fact, only be effected by that man; development of the people can only be effected by the people." 38/

This approach to development, which emphasizes the central role of participation, also serves to underline the importance of implementing appropriate structural changes which are conducive to full popular participation. For while development of a people can only be effected by the people themselves, it can nevertheless be thwarted by a wide range of obstacles which may be either domestic or external in origin. 39/

2. The role of law and legal resources

113. The role to be played by law and lawyers in promotion of the right to development has been described in the following terms:

"The adoption by the international community of the principle of the right to development offers a unique opportunity for revitalizing what to the world's millions appear to be innocuous or at times even irrelevant concepts of 'human rights' and 'the rule of law'. As seen from the perspective of victims of maldevelopment, 'the rule of law' and 'human rights' appear as no more than the rights of ruling elites to perpetuate dependency and exploitation. Lawyers attempting to promote the right of development should therefore concentrate their efforts on enhancing the ability of the impoverished to assert for themselves the right to development. Attention should be given to the scope for protection that lies in preventive action, e.g., by securing real and meaningful participation as a means for creating structural conditions which are less amenable to violation of human rights." 40/

38/ Julius K. Nyerere, Freedom and Development (London, Oxford University Press, 1973), p. 60.

39/ Asbjørn Eide, "Consideration of the impact of the arms race in the realization of the right to peace; analysis of the concrete measures for the full enjoyment of human rights, particularly the right to development", (HR/NEW YORK/1981/BP.1).

40/ "Summary of discussions and conclusions of the International Commission of Jurists 1981 Conference on Development and the Rule of Law", Development, Human Rights and the Rule of Law (Oxford, Pergamon Press, 1981), p. 228.

114. In the context of promoting development through change, the term "legal sources" has been defined as "the knowledge and skills which enable people, themselves, working collectively, to understand law and use it effectively to perceive, articulate and advance or protect their interests". 41/ It is clear that the precise manner in which law and legal resources can best be adopted in order to promote realization of the right to development will vary from country to country and situation to situation. However, in general terms it has been suggested that "the task of the legal profession, in the context of the impoverishment of peoples in the third world, is not only to provide them with traditional legal aid but to build up their legal resources, i.e., the development of their community strength, knowledge and capacity to make use of the law". 42/

115. In so far as the concept of the rule of law constitutes one of the methods by which realization of the right to development can be promoted at the national level, it is essential that it be consistent in all respects with the principles proclaimed in the International Bill of Human Rights. Unless popular participation in the formulation of laws and in the design and administration of structures to implement them is encouraged, legal systems risk becoming, in practice if not also in theory, the preserve of wealthy and powerful élites. The challenge of devising means by which to ensure that legal systems reflect and facilitate effective popular participation is increasingly being addressed by inter-governmental and non-governmental organizations. 43/ Without duplicating that work in the present context it is appropriate to note that such endeavours can shed very considerable light on the methods and policies which should be adopted at the national and local levels for promotion of the right to development.

3. The role of the public sector

116. The important role of the public sector in promoting the economic development of developing countries has been reaffirmed by the General Assembly and the Economic and Social Council in a number of recent resolutions. 44/ It has also been the subject of specific reports prepared by the Secretary-General 45/ and of studies prepared by other organizations 46/ which provide an indication of some of the ways in which the activities of the public sector may contribute to promotion of the right to development. Without duplicating those reports in the present study it is appropriate to note that there are also limitations on the extent to which the public sector can effectively be used as a vehicle for realization of the right to development at the national and local levels.

41/ James Paul and Clarence Dias, Law and Legal Resources in the Mobilization of the Rural Poor for Self-Reliant Development (New York, International Center for Law in Development, 1980). p.v.

42/ Development, Human Rights and the Rule of Law, (Oxford, Pergamon Press, 1981), p. 231.

43/ Ibid.; Paul and Dias, op. cit.; and Social Problems of Low Income Groups: Some Legal Approaches, Report of Workshop, 17-23 February 1981, ESCAP, doc. SD/WSPLIG/9.

44/ General Assembly resolution 3335 (XXIX); 3488 (XXX), 32/179, 33/144 and 34/137; and Economic and Social Council resolutions 1978/60, 1979/48 and 1981/45.

45/ E/1979/66 and E/1981/66.

46/ Notable among these is the International Center for Public Enterprises in Developing Countries (ICPE), an intergovernmental institution of developing countries, located in Ljubljana, Yugoslavia. See, for example, Women as a Factor of Development and the Responsibilities of Public Enterprises in this Regard (Ljubljana, ICPE, 1980).

117. In this regard the Secretary-General has noted elsewhere the contradictions which may arise out of endeavours to promote centralized economic decision-making on the one hand and efforts on the other hand to foster broad-based participation and to encourage individual and group initiative and enterprise. ^{47/} A similar dilemma exists with respect to the role of the public sector in the promotion of human rights, including the right to development. The greater the degree of institutionalization involved in efforts to promote respect for human rights, the greater may be the potential for abuse of the relevant procedures or machinery. As a recent UNESCO report notes, it is possible in a welfare State to benefit in terms of welfare, security and freedom while at the same time losing an identity - thus obtaining the first three at the expense of alienation. ^{48/} Thus, despite the importance of the role of the public sector, the potential for utilizing community-based structures, rather than governmental bureaucracies, should be fully explored in seeking to promote realization of the right to development. ^{49/} Means by which to ensure the accountability of bureaucracies to the public which they are meant to serve could also be the subject of future analysis.

4. Attention to the needs of specific groups

118. Among the recommendations adopted by the United Nations seminar on the relations that exist between human rights, peace and development, held in 1981, was one to the effect that "special measures be undertaken to facilitate the participation of vulnerable or disadvantaged groups, including migrants, migrant workers and indigenous peoples". ^{50/} In Chapter IX of the present study consideration is given to the importance of such methods and policies for promotion of the right to development. In addition, a recent report of the Secretary-General has described measures which have been adopted by different States with a view to protecting the human rights of categories of persons such as children and minors, and ethnic, linguistic and religious minorities. ^{51/}

5. The role of non-governmental organizations (NGO's)

119. The view that non-governmental organizations have an important role to play in promotion of the right to development at the national level is implicit in the emphasis attached by recent international conferences to the importance of encouraging the emergence of endogenous participatory structures. Thus for example the Programme of Action for the Second Half of the United Nations Decade for Women: Equality, Development and Peace adopted by the World Conference of the United Nations Decade for Women at Copenhagen in 1980 stated that "Governments should recognize the importance of

^{47/} "Aspects of social development in the 1980's: Note by the Secretary-General", E/CN.5/585, paras. 13-24.

^{48/} "Final Report of an expert meeting on human rights, human needs and the establishment of a new international economic order", (UNESCO doc. SS.78/Conf.630/12), para. 18.

^{49/} Paul and Dias, op. cit., p. 5.

^{50/} ST/HR/SER.A/10, para. 219 (8) (c).

^{51/} "National institutions for the promotion and protection of human rights: Report of the Secretary-General" (A/36/440), paras. 116-145.

the role of women's organizations, encourage and assist them and provide them with financial and other assistance, particularly at the grass-roots level". 52/ Similarly many participants in the 1978 United Nations seminar on national and local institutions for the promotion and protection of human rights emphasized the important contribution made by non-governmental organizations in the human rights field. 53/ With respect to promotion of the right to development, the challenge with which non-governmental organizations are confronted is to bridge the gap between traditional human rights concerns on the one hand and structural and other development-related issues on the other hand.

E. Conclusions

120. It is clear that there are no magic formulas through which realization of the right to development at the national level can be achieved. 54/ While the most appropriate methods and policies for this purpose will vary from situation to situation according to a variety of factors it can nevertheless be said that certain approaches remain of universal relevance. 55/ Pre-eminent among these is the fostering of participation by the people in the institutions and systems which govern their lives. As stated in the Programme of Action adopted by the World Conference on Agrarian Reform and Rural Development, "people's participation is a basic human right and [is] also essential for realignment of political power in favour of disadvantaged groups and for social and economic development". 56/

121. In concluding this chapter on methods and policies for promoting realization of the right to development at the national level, it is appropriate for two reasons to recall in some detail the measures relating to people's participation which were endorsed by that Conference. The first reason is that the rural poor constitute a large part of those people who are presently denied their right to development, and the second is that the policies proposed are, in many respects, of equal relevance to programmes designed to assist the urban poor and to promote realization of the right to development in general. Thus, the Programme of Actions states: 57/

"To provide the basis for effective participation by the people, Governments should consider action to:

A. Popular Organization

- (i) Remove all barriers to the free association of rural people in organizations of their choice and ratify and enforce ILO Convention Nos 87 and 141 and recommendation No. 149 on the role of rural workers' organizations in economic and social development.

52/ A/CONF.94/35, chap. I, para. 102.

53/ ST/HR/SER.A/2, paras. 120-145.

54/ An example of one method by which policies predicated upon recognition of participation as a basic human right may be implemented in practice is contained in a paper submitted to the Working Group of Governmental Experts on the right to development entitled "The national dimensions of the right to development: Certain views and experiences of the SFR of Yugoslavia", (E/CN.4/AC.34/WP.11).

55/ See generally, "National institutions for the promotion and protection of human rights: Report of the Secretary-General" (A/36/440); "National Experience in promoting the co-operative movement: Report of the Secretary-General" (A/36/115); and Public Administration Institutions and Practices in Integrated Rural Development Programmes, (United Nations publication, Sales No. E.80.II.H.2), passim.

56/ FAO doc. WCARRD/REP, July 1979, p. 8.

57/ Ibid, pp. 9-10.

- (ii) Encourage the establishment of self-reliant local, regional and national federations of peasant and worker associations and rural co-operatives, with positive Government support and due regard to their autonomy.
- (iii) Promote the participation of rural people in the activities of rural development agencies and ensure that these agencies work in close co-operation with organizations of the intended beneficiaries of their programmes.
- (iv) Encourage people's organizations providing various economic, social and cultural services to develop self-reliance at the community level and assist them in such ways as meeting legal and financial requirements, training of leaders and other initial needs, exercising care that their independence is not compromised.
- (v) Provide opportunities for rural people's organizations to participate at the local level in the identification, implementation and evaluation of development projects, including rural works programmes.
- (vi) Mobilize the energies of both urban and rural youth for a variety of rural development activities through programmes and mechanisms responding to their needs, abilities and aspirations, including national volunteer services, rural youth associations and work-study programmes.

B. Strengthening of Local Government

- (i) Decentralize institutions of Government decision-making in particular the planning machinery, within the framework of national policy, to enable people's participation in the planning, formulation and implementation of development programmes relating to their regions or areas. Establish recruitment and staff training policies which ensure support of the interests of the rural poor.
- (ii) Reform, or where necessary create, institutions of local Government, including local courts, to promote and facilitate democratic and effective participation by the people, including participation by rural workers through organizations of their own, and assist in the management and organization of such institutions through programmes of training and motivation.
- (iii) Give special assistance to help local Government institutions establish and strengthen educational and training programmes for disadvantaged groups to enhance their capacity to participate in development decisions and to make more effective use of inputs, technology and Government services.

C. Participation in Agrarian Reform

- (i) Encourage the formation of organizations of the intended beneficiaries of land and tenure reforms and involve them in the redistribution of land and water rights and in the implementation and regulation of tenancy laws.

- (ii) Channel publicly supplied credit and material inputs through organizations of smallholders, beneficiaries of land and tenure reforms and other peasant groups.
- (iii) Ensure that organizations of beneficiaries or settlers in settlement schemes have the opportunity of mobilizing labour and other resources for investment in infrastructure."

The foregoing list also serves to emphasize that the major challenge is not so much to devise new methods and policies by which to promote realization of the right to development as to stimulate the political will and determination which are required to apply, effectively and systematically, a range of methods and policies which are already well known.

Chapter IX. INTEGRATION OF HUMAN RIGHTS IN DEVELOPMENT POLICIES
AND PROCESSES

A. The relationship between human rights and development

1. Mandate for the present chapter

122. In its landmark 1977 resolution in the field of human rights, resolution 32/130, the General Assembly stated unequivocally that "all human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political and economic, social and cultural rights". Yet while the theory is clear, the practice, especially in connection with the quest for development, not infrequently gives rise to certain problems. This discrepancy between the theory and the practice has led a number of commentators to pose questions such as that recently addressed by the Rector of the United Nations University: "are development and freedom innately incompatible, as irreconcilable as oil and water?". 1/ The central importance of this and related issues has been consistently noted during the debates on the right to development in the Commission on Human Rights.

123. In connection with the present study, the Commission in paragraph 2 of its resolution 7 (XXXVI) requested the Secretary-General "to elaborate ... on the conditions required for the effective enjoyment by all peoples and all individuals of the right to development, paying special attention to the effects on development of ...

...

(k) Non-discrimination of any kind in the exercise of the right to development;
[and]

(1) Existence of effective safeguards against arbitrary action and in favour of respect for human rights, in the interests of peoples, minorities and individuals ...". 2/

Further elaboration of this mandate was provided during the relevant debates in the Commission in both 1980 and 1981. Thus, for example, in 1980 it was stated that "full consideration of the ways in which human rights were inter-related was an essential part of the study" 3/ and in 1981 that "it was the duty of the Commission to consider ways and means of integrating human rights into the development process. The promotion of one set of human rights or of one type of development was no excuse for ignoring another". 4/

1/ Soedjatmoko, "Freedom and Development", Development Forum (Geneva, DPI/UNU), vol. VIII, No. 7, September 1980, p.1.

2/ Commission on Human Rights, Report on the Thirty-sixth Session, Official Records of the Economic and Social Council, 1980, Supplement No. 3, (E/1980/13), p.165.

3/ Ibid., para. 130.

4/ Commission on Human Rights, Report on the Thirty-seventh Session, Official Records of the Economic and Social Council, 1981, Supplement No. 5, (E/1981/25), para.119.

124. In the present chapter, consideration is given first to the theory and practice relating to the indivisibility and interdependence of economic, social and cultural rights and civil and political rights. Consideration is then given to the role of human rights in the development process, and to some of the arguments invoked for according priority to development over respect for human rights. The question of priorities, the role of the United Nations in encouraging promotion of the right to development at the national level, and the problem of discrimination are also considered from the perspective of the right to development.

2. The indivisibility and interdependence of the two sets of human rights:
a fundamental tenet of the right to development

125. The question of the relationship between economic, social and cultural rights on the one hand and civil and political rights on the other has always been central not only to the debate on the right to development ^{5/} but in the whole field of human rights in general. Some aspects of the relationship were considered in the report of the Secretary-General on the international dimensions of the right to development ^{6/} but it is appropriate to include a more elaborate analysis both of the theory and the practice in the present study.

(a) Background

126. The fundamental link between the two sets of rights is clearly expressed in the Universal Declaration of Human Rights, adopted in 1948. Thus in the Preamble the link is established between freedom of speech and belief and freedom from fear and want. The Universal Declaration taken as a whole relates to both types of right. Although in the early years the work of the United Nations in the human rights field was characterized by considerable controversy as to whether there should be one or two Covenants, there was nevertheless widespread agreement, as stated for example by the General Assembly in 1950, that "the enjoyment of civil and political freedoms and of economic, social and cultural rights are interconnected and interdependent". ^{7/} In accordance with that approach, the Preamble to both International Covenants on Human Rights states 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".

(b) Re-affirmation

127. This doctrine relating to the two sets of rights has been restated on many occasions in recent years in various United Nations fora. ^{7A/} In addition, it has been re-affirmed by a wide range of other intergovernmental and international non-governmental bodies. Three examples may suffice in the present study:

^{5/} See, e.g. General Assembly resolutions 34/46, paras. 3 and 8, and 35/174, paras. 3 and 4.

^{6/} E/CN.4/1334, paras. 115-129.

^{7/} This clause was used both in the preamble of General Assembly resolution 421 E (V), in which it was decided that there should be a single Covenant, and in the preamble of General Assembly resolution 543 (VI), in which it was decided that there should be two Covenants. See, generally, Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 (part II), document A/2929, chap. II, paras. 4-12.

^{7A/} See, e.g., General Assembly resolutions 34/46, 35/174 and 36/133.

- (i) The final declaration adopted by the Sixth Conference of Heads of State or Government of Non-Aligned Countries, held in Havana in 1979, stated inter alia, that "all human rights and fundamental freedoms are inalienable, indivisible and interdependent; equal and urgent consideration should be given to political, economic, social and cultural rights"; 8/
- (ii) The 1980 Annual Report of the Inter-American Commission on Human Rights contains a separate chapter focusing on the important "cause and effect" relationship between violations of each of the two sets of rights; 9/ and
- (iii) A resolution adopted by the 68th Inter-Parliamentary Conference, held in Havana in September 1981, "affirms solemnly that the concept of human rights is one and indivisible, including individual and collective rights, freedom of opinion, expression and association and information, political, economic and social rights, and the rights of individuals and of peoples". 9A/

128. Before turning, in section 3 of this chapter, to a critique of some of the grounds adduced for abridging human rights in order to promote economic development, it is appropriate first to consider three further aspects of the interdependence of all human rights, each of which is of major importance in the context of promotion of the right to development at the national level.

(c) Similarities and differences between the two sets of rights

129. Since implementation of the right to development as a human right requires that equal emphasis be placed on both sets of rights, it is necessary in considering the issues relevant to its promotion at the national level to consider also the implications which flow from the different nature of the two sets of rights. Apart from the obvious distinctions relating to subject matter, the single most important difference relates to the means chosen in each of the Covenants for implementation of the rights contained therein. As the Secretary-General has noted elsewhere, "the realization of the whole range of economic, social and cultural rights ... will in many cases require the full use of available resources and certain structural and institutional changes which will depend upon national circumstances; their effective transformation into directly applicable and enforceable legal rights may require time". 10/

130. A State which becomes a party to the International Covenant on Civil and Political Rights is under an immediate obligation to comply with its provisions. It undertakes "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ...". By comparison, a State party to the International Covenant on Economic, Social and Cultural Rights "undertakes 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 present Covenant by all appropriate means, including particularly the adoption of legislative measures". 11/

8/ A/34/542, annex, part I, para. 266 (a).

9/ Organization of American States doc. OEA/Ser.G, CP/doc. 1110/80 (1980); reproduced in United Nations document E/CN.4/1453.

9A/ A/36/584, annex, p. 18, para. 1 of resolution on "the relationship between people, parliament and the executive ...".

10/ E/CN.4/988, para. 75.

11/ Article 2 (1) of each Covenant.

131. It is clear therefore that the obligations assumed under each Covenant differ in some respects, particularly concerning the requirements as to immediacy of implementation. There are also a number of other differences between the Covenants such as the provisions relating to the permissible limitation of the enjoyment of certain rights, 12/ and the type of measures which may be the most effective in securing the various rights. Nevertheless, these differences are not such as to bring into question the interdependence and indivisibility of the two sets of rights, nor do they provide a justification for questioning the very validity of economic, social and cultural rights as fully fledged human rights. Yet a study such as the present one cannot overlook the fact that there is a certain body of thought which, on various grounds, questions both the legitimacy and the usefulness of these rights. Unless such challenges provoke an adequate response, there is a risk that the notion of indivisibility and interdependence will be undermined and that inadequate attention will be accorded to promotion of the set of rights which is under attack.

132. In the present study it is not possible to undertake the detailed refutation which would seem to be required. Nevertheless, it is appropriate to refer to some of the arguments which have been put forward. It has been said for example with regard to economic and social rights that "a philosophically respectable concept of human rights has been muddled, obscured and debilitated in recent years by an attempt to incorporate into it specific rights of a different logical category". 13/ In this view economic and social rights do "not make sense" in philosophical terms. 14/ Other commentators have drawn a distinction between "traditional" human rights and what they term economic and social ideals and aspirations. 15/ Another writer has concluded that "except in circumstances of minimal or minor economic, social or cultural relevance, and subject to [certain] distinctions ... the rights granted by the International Covenant on Economic, Social and Cultural Rights are of such a nature as to be legally negligible". 16/

133. These and related criticisms tend frequently to confuse questions relating to the fundamental philosophical and ethical basis which underlies the whole concept of human rights with issues arising out of the interpretation, application and development of the international law of human rights. Thus, for example, those who argue that economic, social and cultural rights are not susceptible to further precision and do not lend themselves to the application of international supervision procedures tend to neglect the vast body of relevant standards already promulgated by the International Labour Organisation, the work of UNESCO in this field, and the implementation procedures established under the International Covenant on Economic, Social and Cultural Rights and the implementation procedures established under the International Covenant on Civil and Political Rights and the Optional Protocol thereto in respect at least of article 1 (2), article 22 and other relevant articles of that Covenant. Similarly those who claim that the concept of economic rights is illusory because economic realities in some countries make the realization and attainment of

12/ See E/CN.4/1334, paras. 123-24.

13/ Maurice Cranston, What are Human Rights?, (London, The Bodley Head, 1973) p. 65.

14/ Ibid.

15/ See for example, "The International Human Rights Treaties: Some Problems of Policy and Interpretation", University of Pennsylvania Law Review, vol. 126, 1978, p. 886 at pp. 909-911.

16/ E.W. Vierdag, "The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights", Netherlands Yearbook of International Law, vol. IX, 1973, p. 69 at p. 105.

an adequate standard of living for everyone an impossibility, overlook "the duty of all member States of the international community jointly and severally to create the necessary conditions for realization of the right to development". 17/

134. Furthermore, the usefulness of a number of the distinctions which are commonly made between the two sets of rights is, in a number of respects, open to question. These include for example the rigid dichotomies sometimes drawn between "individual" and "collective" rights, "positive" and "negative" rights, "costless" and "costly" rights and even between "economic" and "political" rights. 18/

135. The conclusion to be drawn from this necessarily brief survey is that recognition of the interdependence and indivisibility of the two sets of rights, which is an essential component for promotion of the right to development at the national level, would be facilitated by further elaboration of the concepts and methodologies relevant to the promotion of economic, social and cultural rights. As the former Director-General of the ILO observed some years prior to the entry into force of the International Covenant on Economic, Social and Cultural Rights:

"That the economic and social 'rights' are justified social claims which political and economic systems must satisfy is no longer open to question; an overwhelming weight of responsible opinion has settled the matter decisively. What does need further analysis, and the jurist is both entitled and called upon to analyse, is, on the one hand, the sense in which these 'rights' have the juristic quality of rights and the measures and procedures required to make them a reality, and, on the other hand, the sense in which these 'rights' are international and the measures and procedures required to make them effectively so." 19/

136. As noted in Part III of the present study, a number of initiatives has recently been taken at the regional level to develop further the concept of economic, social and cultural rights. In the United Nations context the Commission on Human Rights may in the same spirit wish to consider supplementing the two major general studies which have been undertaken to date in this field 20/ by a further study addressing such issues as:

- (i) What are the minimum elements necessary in national legislation for guaranteeing a particular economic, social or cultural right as a human right?

17/ Commission on Human Rights resolution 4 (XXXV), para. 5, Official Records of the Economic and Social Council, 1979, Supplement No. 6 (E/1979/36), p. 107, and Commission resolution 7 (XXXVI), para. 5, Official Records of the Economic and Social Council, 1980, Supplement No. 5 (E/1980/13), p. 166.

18/ These dichotomies are considered in R.H. Green, "Basic Human Rights/Needs: Some Problems of Categorical Translation and Unification", in International Commission of Jurists, Review, No. 27, December 1981, pp. 53-58. See also Henry Shue, Basic Rights, (Princeton, Princeton University Press, 1980).

19/ C. Wilfred Jenks, Social Justice in the Law of Nations: The ILO Impact after Fifty Years (London, Oxford University Press, 1970), p. 72.

20/ The Realization of Economic, Social and Cultural Rights, Problems, Policies and Progress, by Manouchehr Ganji, Special Rapporteur of the Commission on Human Rights, (United Nations publication, Sales No. E.75.XIV.2) and a preliminary study by the Secretary-General of "issues relating to the realization of economic and social rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights" (E/CN.4/988).

- (ii) What criteria are available which might offer guidance to Governments in the allocation of resources for the implementation of various rights?
- (iii) What supervisory mechanisms are desirable at the national or local level with a view to promoting the implementation of a right as a human right?
- (iv) What recourse procedures are desirable at the national or local level to guarantee the implementation of those rights, whether new procedures or adaptations of existing procedures?
- (v) How should violations of a right be tackled?
- (vi) What relevant practices of supervisory or adjudicatory bodies at the national or international levels are available with regard to the implementation of a right?
- (vii) What policies of international co-operation and solidarity should be followed with a view to the implementation of a particular right? and
- (viii) What supporting institutional mechanisms are needed at the national, regional or international levels in order to promote the implementation of a right? 21/

137. As long as the nature and implications of one set of rights remain inadequately understood the possibilities for achieving an integrated and balanced approach to the implementation of the right to development will remain limited. This conclusion is also implicit in the resolution adopted by the International Conference on Human Rights held in Teheran in 1968, which called upon "all Governments to focus their attention on developing the material means of protecting, promoting and realizing economic, social and cultural rights, as well as developing and perfecting legal procedures for prevention of violations and defence of these rights". 21A/ A study focusing on some or all of the issues enumerated above would, by according full recognition to the principle of interdependence and indivisibility, also shed considerable light on the relationship between the two sets of rights.

(d) Interdependence and indivisibility in practice

138. In practice the relationship between the two sets of rights is complex and inter-acting, and one which on occasion may give rise to conflict between competing objectives. Insistence upon the principle that all rights are interdependent and indivisible does not in any way amount to a denial that such conflicts can and do arise. The major difficulty however lies in the tendency to analyse conflict situations in terms of a choice between one extreme or another rather than seeking to achieve the delicate balance which is required. Thus for example policy prescriptions are often put forward which assume the necessity of abandoning some objectives (e.g. those contained in one set of rights) in order to realize others.

21/ These questions were posed by the Deputy Director of the Division of Human Rights in his opening statement to the Commission on item 3 of its agenda in 1981 (E/CN.4/SR.1612, para. 39). Similarly, one of the members of the Human Rights Committee has proposed that the "Committee should stress the interdependence of [all] rights, and might consider undertaking or sponsoring a study showing how ... the exercise of such rights as the right to health and the right to education was directly linked to the implementation of civil and political rights" (CCPR/C/SR.113, para. 8).

21A/ Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968 (United Nations publication, Sales No. E.63.XIV.2), resolution XXI, para. 6.

For example, with respect to labour conditions it is sometimes argued that adherence to international labour standards is a luxury which cannot be afforded by a country which already suffers from substantial unemployment and under-employment. But while it may be impractical or otherwise inappropriate in some circumstances to seek to promote particular standards relating, for example, to holidays with pay, it is not valid to conclude on that basis that employment must be promoted at all costs and that basic human rights standards relating to working conditions are a luxury which has to be dispensed with. Such reasoning too readily gives rise to the perpetuation of situations involving, for example, forced labour or the exploitation of child labour or other similar practices which are in no way central to the achievement of stated objectives of national policy. The appropriate response clearly requires a careful balancing of the different objectives being sought, with full account being taken of the requirements of relevant international human rights provisions. This issue is further developed in section 5 below in the context of the question of priorities.

3. Implications of the right to development: the role of human rights in the development process

139. It is now generally agreed that a development strategy based on repression and the denial of either civil and political rights or economic, social and cultural rights, or both sets of rights, not only violates international human rights standards but is a negation of the concept of development. ^{22/} It remains necessary, however, to spell out further the implications of this proposition, which is an essential component of the right to development, and to demonstrate its incompatibility with a range of development policies which has found a degree of favour in the past. In the present section, consideration is given to the general question of the relationship between human rights and development, and in the following two sections the specifically economic aspects of the relationship are analysed, and the question of priorities is addressed.

140. In the first preambular paragraph of its resolution on "Economic Development and Human Rights" the 1968 International Conference on Human Rights noted that "there is a profound interconnection between the realization of human rights and economic development". ^{23/} Subsequently, the Commission on Human Rights affirmed in 1969 that "the ultimate objective of any effort to promote economic development should be social development of peoples, the welfare of every human being and the full development of his personality". ^{24/} Later in the same year the General Assembly

^{22/} See for example, Commission on Human Rights, Report on the Thirty-fifth session, Official Records of the Economic and Social Council, 1979, Supplement No. 6 (E/1979/36) para. 114; and I.P. Blisshchenko, "The Impact of the New International Order on Human Rights in Developing Countries", Bulletin of Peace Proposals, vol. 11, No. 4 (1980) p. 383.

^{23/} 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), resolution XVII, p. 14.

^{24/} Commission on Human Rights resolution 15 (XIV), para. 1(b), Report of the Commission on Human Rights on the Twenty-fifth session, Official Records of the Economic and Social Council, Forty-sixth session (E/4621), p. 190.

adopted the Declaration on Social Progress and Development 25/ which, to this day, remains its most explicit and detailed affirmation of the fundamental importance of respecting human rights in the development process. The Declaration proclaims in article 1 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." Similarly, article 2 provides 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."

The Declaration also contains a variety of other provisions, several of which have been noted in earlier sections of the present report, which highlight the nexus between human rights and development efforts. Although the Declaration is now more than 12 years old its continuing significance has recently been underlined by the General Assembly in resolution 34/59, of 1979, in paragraph 1 of which it recommended "that all Governments should, in their policies, plans, programmes and implementation machinery, continuously take into consideration the principles, objectives, means and methods of the Declaration on Social Progress and Development".

141. The Commission on Social Development has also, from time to time, emphasized the importance of a number of the principal elements of the right to development. Thus, for example, in 1971 the Commission stressed that, for practical as well as moral reasons, development has no validity or justification unless it is firmly subordinated to an overriding social objective, namely the preservation of humanity and improvement in the quality of life for all people without distinction. Economic and social measures are simply means to that larger end, and can be justified even in so far as they genuinely contribute to it. Realization of that principle should aim above all else at humanizing the development process and at helping disadvantaged and deprived people everywhere to share fully in the fruits of progress and in cultural and political life. 26/

142. Thus, as the Secretary-General has recently noted in another report, it is essential "at the international as well as at the regional, national and local levels, to integrate the human rights dimension into political, economic, social and cultural policies and programmes, so as to make the basic rights of all individuals the central objective of such policies."26A/

25/ Resolution 2542 (XXIV).

26/ Official Records of the Economic and Social Council, Fiftieth Session, Supplement No. 3 (E/4984), para. 23.

26A/ "Present international conditions and human rights: Report by the Secretary-General" (A/36/462), para. 15.

(a) Arguments invoked for according priority to development over respect for human rights

143. Yet despite the frequency with which States represented in the various United Nations organs have reiterated the importance of respect for human rights as a fundamental part of the development process, there continue to be instances in which the implementation of national development strategies appears to be made either explicitly or implicitly dependent upon repression, or directly or indirectly violates other aspects of the right to development of peoples and individuals. Implicit in most such strategies is an approach which is plainly incompatible with the human rights obligations of States, including in particular the right to development: it is an approach which accords strong priority to economic development at the expense of respect for human rights. In this connection a variety of arguments has been invoked. They are not peculiar to any one ideology and the policies designed to implement such an approach have taken a wide variety of forms. In the present section it is possible to consider only a few of these arguments. It should be stressed that the following examples are not exhaustive and that the approaches dealt with represent, in many instances, important concerns which, when viewed in perspective, may contribute to, rather than hinder, realization of the right to development.

(i) The quest for discipline, political order and stability

144. In a Background Paper prepared for a recent United Nations human rights seminar, critical reference was made to "the widely held belief that democracy is unsuitable to developing countries as it brings large masses of people into the political process, raises expectations, and leads to unrest and instability".^{27/} Such arguments are usually developed in a context which emphasizes the importance of establishing and maintaining a strong political order so as to facilitate the achievement of development.^{28/}

145. The problem, from the perspective of the right to development, lies not so much in the objective importance of these conditions, which is undoubted, but in the manner in which their achievement is sought. All too often conditions such as discipline, political order,^{28A/} stability and strong government become values in their own right, and are pursued to the exclusion of human rights concerns. Thus, for example, discipline moves from being a legitimate approach to the implementation of decisions arising out of genuinely participatory and democratic decision-making processes, to an excuse for insisting that orders from above be followed regardless of their objective popular legitimacy.^{29/} Similarly, the term "political order" can be used in a variety of senses. Sometimes it is used in an effort to put beyond reproach the legitimacy of the means used by governments to maintain power. In this

^{27/} Rajni Kothari, "Human Rights as a North-South Issue", (HR/GENEVA/1980/BP.1), p. 10.

^{28/} For an example of an approach which emphasizes political order see Samuel P. Huntington, Political Order in Changing Societies (New Haven, Yale University Press, 1968).

^{28A/} Cf. the report of the Secretary-General on "Present international conditions and human rights" in which it is noted that the quest for international order may be perceived either in terms of a narrow definition of security or in broad human terms (A/36/462), para. 10.

^{29/} On the relationship between freedom of expression and discipline see Julius K. Nyerere, "Freedom and Development", in Freedom and Development (Dar es Salaam, Oxford University Press, 1973), pp. 62-65.

way, it has been argued, "it ignores the danger posed by government that is too strong (however firmly institutionalized), and the disorder that derives from officially sanctioned repression. The concept of political order is not neutral: it places the burden of disorder on subordinates who challenge elites." 30/

146. In practice the importance of political order and related goals is sometimes used to justify violations of the right to freedom of expression. But as Soedjatmoko has concluded, "without freedom to dissent responsibly, the creative developmental impulses of a society disappear and the struggle for the other human rights becomes impossible. If, then, the limits to the right to dissent are wrongly drawn, fear, hatred, violence and cruelty (whether related to class, race or religion) are bound to take over." 31/

147. As Kothari indicates, those who advocate stability even at the cost of dictatorship not only have a low regard for freedom and dignity, and thus for the right to development, but also "underrate the possibility of greater cohesion and stability that an open political process is likely to bring to societies so full of diversity and plurality of allegiance and identification." 32/ In essence, the principles inherent in the right to development demand the pursuit of a balanced approach to development which eschews sweeping generalizations and which takes full account both of human rights and of the importance of stability and order as means by which to promote realization of those rights.

(ii) The imperative of modernization

148. The case in favour of a degree of modernization as a necessary part of the development process can be a persuasive one, although much hinges on the way in which the term "modernization" is defined and the manner in which the process is implemented. In his 1975 study on The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress the Special Rapporteur of the Commission on Human Rights attached considerable importance to the need for rapid modernization, the first tenet of which was said to require that "the national Governments lay down the policy framework". 33/ A variety of other approaches to modernization has also been suggested by other commentators. 34/

149. In a recent analysis of the relationship between freedom and development, Soedjatmoko considered the strengths and weaknesses of what he terms "the modernizing bureaucratic state". 35/ He concluded that quite often, because of particular rigidities within the system, such States have "found it difficult to manage rapid social transformation ... in a manner which would enhance human freedom in society. This has led to a decline of momentum in the development effort as well as an erosion of security and stability". 36/

30/ Mark Kesselman, "Order or Movement? The Literature of Political Development as Ideology", World Politics, vol. 26, No. 1 (1973), p. 143.

31/ Soedjatmoko, op. cit., p. 4.

32/ Kothari, op. cit., p. 11.

33/ United Nations publication, Sales No. E.75.XIV.2, p. 298, para. 59,

34/ See for example the works of Lucian W. Pye, including Politics, Personality and Nation-Building (New Haven, Yale University Press, 1962). Cf. the approach to modernization taken by Dankwart A. Rustow, "Man or Citizen? Global Modernization and Human Rights" in Paula Newberg, ed., The Politics of Human Rights (New York, New York University Press, 1980), pp. 19-32.

35/ Soedjatmoko, op. cit., p.1.

36/ Ibid., p. 4.

150. In the final analysis the extent to which policies of modernization are compatible with the requirements of the right to development will depend on the circumstances in each particular case. Nevertheless, it is appropriate to note that, in the past, the "imperative" of modernization has on occasion been used as a ground for promoting policies which are culturally and socially alien to the society concerned, which unduly favour urban élites at the expense of all other sectors of society and which are not conducive to the promotion of respect for the right to development. 36A/

(iii) Nation-building

151. To a large extent, the use of nation-building as a ground to legitimate the neglect of human rights is usually closely tied to the two issues raised above. The challenge of nation-building is a truly pressing one for many developing countries and a successful response will involve overcoming many obstacles. In many respects the promotion of the right to development is, given the shape of the existing world system, predicated on the achievement of a secure State and nation. Particularly in developing countries, which may be faced by problems such as acute poverty, an unstable colonial heritage, resource and population pressures, threats to national sovereignty and integrity, comparative geographical disadvantage and a record of frequent attempts at internal subversion, the challenge of nation-building is of pressing importance. It is this very importance, however, which can provide the occasion for those in power to exploit real or perceived threats to the security of the nation to justify the adoption of repressive policies which serve primarily to maintain their own position rather than to promote development or a stable form of nation-building based on popular participation and support.

(iv) The claim that existing international norms are culturally or otherwise inappropriate

152. Despite the fact that the Universal Declaration of Human Rights affirms its universal applicability, and that all but perhaps the most recently created States in the world community have ratified at least some of the major human rights instruments adopted within the framework of the United Nations family and the various regional organizations, occasional claims are made that this or that human right is, for cultural or other reasons, inappropriate in a particular situation. To the extent that such claims emanate from groups whose purpose is to abridge the enjoyment of human rights in the society in question they must be rejected. Thus, as one commentator has put it in relation to what he termed "currently fashionable justifications for authoritarianism in Asian developing countries":

"One [justification] is that Asian societies are authoritarian and paternalistic and so need governments that are also authoritarian and paternalistic; that Asia's hungry masses are too concerned with providing their families with food, clothing, and shelter, to concern themselves with civil liberties and political freedoms; that the Asian conception of freedom differs from that of the West; that, in short, Asians are not fit for human rights [... This] is racist nonsense ... Authoritarianism promotes repression not development - repression that prevents meaningful change and preserves the structures of power and privilege." 37/

36A/ See Social Development and the International Development Strategy (Geneva, United Nations Research Institute for Social Development 1979) p. 7, para. (d).

37/ José W. Diokno, 1978 Sean MacBride Human Rights Lecture, International Council of Amnesty International, Cambridge, 21 September 1978 (mimeo) p. 9.

Similarly another commentator has recently observed that:

"The idea of human rights is based on the conviction that all peoples are endowed with the same capabilities which allow them to attain the highest level in intellectual, technical, social, economic, cultural and political development. The differences to be observed in the achievements of the different peoples are to be explained in terms of geographical, historical, political, economic, social and cultural factors. These differences can under no circumstances serve as a pretext for any rank-ordered classification of nations or peoples from the point of view of their human values." 38/

153. Thus, while States may wish, in accordance with the popular will and in the light of particular circumstances, to accord priority 39/ to particular objectives this should not be taken to imply that specific human rights contained in the International Bill of Human Rights are per se inappropriate in that society. At the same time it is appropriate for societies to seek to utilize different modalities for promoting the realization of human rights which are not necessarily in the same mould as those used elsewhere.

(b) The need for balance

154. The common thread running through each of the grounds noted above is the tendency to single out particular aspects of the multi-faceted and complex process of development and focus on them at the expense of neglecting a range of other, equally important aspects. The major technique by which this process of arbitrary selectivity is usually defended is through the setting up of false dichotomies in which two allegedly incompatible choices are offered, only one of which may be chosen. Examples include bread or freedom, democracy or development, employment or reasonable working conditions, freedom of speech or economic security, etc. 40/ This technique is illustrated by the following argument:

"In the third world countries suffering from poverty, widespread illiteracy and a yawning gap in domestic distribution of income and wealth, a constitutionally guaranteed freedom of opposition and dissent may not be as significant as freedom from despair, disease and deprivation. The masses might indeed be much happier if they could put more into their mouths than empty words; if they could have a health-care center instead of Hyde Park corner; if they were assured gainful employment instead of the right to march on the Capitol. The trade-offs may be disheartening and objectionable to a Western purist, but they may be necessary or unavoidable for a majority of nation States." 41/

38/ Adam Lopatka, "On the Notion of Human Rights", GDR Committee for Human Rights Bulletin, 1979, No. 4, p. 6.

39/ See section 5 infra on the question of priorities.

40/ As one observer has asked: "Does resolving a balance of payments crisis or balancing the budget necessitate the suspension of elections and the imposition of torture or are some elements of many authoritarian systems merely the voluntary preference of a specific military régime?" Sylvia Ann Hewlett, "Human Rights and Economic Realities: Tradeoffs in Historical Perspective", Political Science Quarterly, vol. 94, No. 3, (1979), p. 454.

41/ Jahangir Amwjeagar, "Rights and Wrongs", New York Times, 29 January 1978, editorial opinion page.

155. The technique of positing false dichotomies in order to justify the violation of certain rights is clearly contrary to the principles underlying the right to development. In most development situations there will, as noted below, 42/ be potential conflicts, but their resolution must be pursued not through the choice of one extreme or the other but through a process of carefully balancing the various values and interests involved. To argue that there is no option but to abandon either one goal or the other is tantamount to conceding the bankruptcy of the overall policy prescription being applied. In the context of the process of development, which inevitably involves the accommodation of a multiplicity of conflicting values, "the pursuit of a single value or a single goal is the greatest enemy of freedom." 43/

4. The political economy of human rights

156. In addition to the various grounds noted above there is a wide range of more specifically economic arguments that is advanced from time to time to justify according priority to economic development at the expense of human rights. Such arguments often remain implicit in certain lines of economic reasoning and are to a greater or lesser degree hidden by glowing descriptions of aggregate targets along with masses of technical data which neglect the human consequences of the relevant proposals. Thus, according to Kothari, many "theoreticians on development" hold steadfastly to the view "that a strong and centralized government with dictatorial powers is better able to embark on rapid economic development and take radical measures aimed at removal of poverty and inequity among the mass of the people." 44/ Within the confines of the present study it is not possible to subject all, or even the main, economic arguments of this genre to the scrutiny that they deserve from the perspective of the right to development. It is therefore proposed only to take note of the major arguments used, then to consider briefly the potentially positive economic consequences of respect for human rights, and finally to take note of the oft overlooked costs of repression.

(a) Major economic arguments used to downgrade priority accorded to human rights 44A/

157. One of the most common arguments for giving absolute priority to economic growth is that the required trade-off will only be a short-term or even temporary phenomenon. Thus, as one economist states, "there is likely to be a conflict between rapid growth and an equitable distribution of income; and a poor country anxious to develop would probably be well advised not to worry too much about the distribution of income." 45/ Yet, as discussed above, 46/ an equitable distribution of income is a pre-condition for realization of the right to development. Moreover, since patterns of income distribution cannot be dissociated from the distribution of social, political and cultural power, such a trade-off is likely to be all-embracing. Thus it has been argued that the logic of the "growth through capital accumulation" theory is flawed and inconsistent with the available evidence:

42/ See section 6 infra.

43/ Soedjatmoko, op. cit., p. 5.

44/ Kothari, op. cit., p. 9.

44A/ Cf. also the arguments analysed in chap. VII supra.

45/ Harry G. Johnson, Money, Trade and Economic Growth (London, George Allen and Unwin, 1962), p. 153.

46/ Chap. VII.

"It ignores the possibility that high-income groups in under-developed countries may indulge in conspicuous consumption rather than save; it neglects the growing importance of corporate savings and public sector savings in modern growth processes; it forgets that private savings may be channelled into Swiss bank accounts rather than domestic investment; and it overlooks the fact that the empirical evidence shows no correlation between inequality and high rates of savings and investment in developing countries." 47/

Therefore, while the importance, particularly for developing countries, of achieving high annual rates of growth should not be under-estimated, the development process must at the same time be designed so as to promote human dignity. 48/ The statement, commonly attributed to Lord Keynes, that "in the long run we are all dead", serves to underline the unacceptability of programmes which defer efforts to ensure at least a minimum of human dignity in the name of long-run economic objectives. Moreover, bitter experience in many cases has shown that the "temporary" consolidation of inequalities in an effort to promote economic growth has represented an enormous obstacle to the possibility of promoting equity at a later stage. Most entrenched élites will inevitably resist proposals to alter the status quo in favour of those who have been hitherto deprived. Arguments that economic growth must take absolute priority over other human development objectives are thus inconsistent with the right to development which requires the adoption of a balanced and equitable approach to development. 48A/

158. Other economic arguments of this type include claims that:

(a) Population pressures necessitate the restriction of certain civil and social rights in the interests of economic development; 49/

47/ Hewlett, op. cit., p. 457.

48/ Both these goals are stated in the International Development Strategy for the Third United Nations Development Decade, General Assembly resolution 35/56. See, for example, paras. 8 and 20 thereof.

48A/ This proposition was strongly affirmed by all participants in the 1978 Dakar Colloquium on Development and Human Rights. See Revue Sénégalaise de Droit, December 1977, No. 22, p. 53.

49/ For contrary arguments cf. chap. VII supra.

(b) Foreign capital investment requires the creation of a stable and attractive investment climate which in turn requires restrictions on labour and other economic and political rights; 50/

(c) The potentially disruptive impact on economic growth which trade unions have, necessitates the imposition of certain restrictions on the rights relating to freedom of association; 51/

(d) Crime and criminal violence constitute a considerable burden on economic development efforts and must therefore be combated by all measures including restriction of civil and political rights; 52/ and

(e) Electoral pressures which cause politicians to act irrationally and against the best interests of the economy should be minimized through restrictions on the electoral process in particular and on political rights in general. 53/

159. In respect to each of these arguments the identification of certain phenomena as potential obstacles to economic growth may or may not be valid. However, the problem from the right to development perspective arises when the course of action prescribed is either logically unrelated to the difficulty cited or is out of all proportion to it. Moreover, any consciously designed development strategy which directly involves the denial of fundamental human rights, in whatever name or cause it may be undertaken, must be deemed to be a systematic violation of the right to development.

50/ For contrary arguments cf. Robert E. Goodin, "The Development-Rights Trade-Off: Some Unwarranted Political and Economic Assumptions", Universal Human Rights, vol. 1, No. 2 (1979), pp. 40-41. One version of this thesis has been strongly stated by André Gunder Frank:

"The imposition of greater exploitation and superexploitation in the Third World as instruments of export promotion and participation in the international division of labour during the world economic crisis must be enforced through political repression. In one country after another during the 1970s martial law, states of emergency, and military governments have suppressed labour movements and union organizations and repressed large sectors of the population through systematic violations of their political, civil, and human rights. This repression is not accidental or merely ideologically motivated. Rather it is a necessary concomitant of economic exploitation".

André Gunder Frank, Crisis in the Third World, chap. 6, "Political-Economic Repression in the Third World", (New York Holmes and Meier, 1980), p. 188.

51/ For contrary arguments cf. Guy Caire, Freedom of Association and Economic Development (Geneva, ILO, 1977).

52/ For contrary arguments cf. "Crime Prevention and Crime Prevention Strategies" (A/CONF.87/4); and "New Perspectives in Crime Prevention and Criminal Justice and Development: The Role of International Co-operation" (A/CONF.87/10).

53/ For contrary arguments cf. Goodin, op. cit., pp. 36-38.

(b) Underdevelopment, states of emergency and human rights

160. The persistence of conditions of underdevelopment, in which millions of human beings are denied access to sufficient food, water, clothing, shelter and medicines and are forced to live in conditions which are incompatible with their inherent human dignity, clearly represents a gross and massive violation of human rights. ^{54/} In the face of such intolerable, yet continuing, deprivation it is perhaps not altogether surprising that it is sometimes suggested: (i) that underdevelopment constitutes a state of emergency; and (ii) that the satisfaction of basic material needs would be expedited if civil and political rights were suspended. Both of these propositions require careful scrutiny in connection with promotion of the right to development at the national level since each represents a potentially major obstacle to realization of that right.

(i) Underdevelopment as a state of emergency

161. It has been argued "that underdevelopment could be considered a permanent state of emergency which justified the suppression of certain civil and political rights". ^{55/} However, propositions of this type are inconsistent not only with the basic premises of the right to development but also with the relevant provisions of the International Covenant on Civil and Political Rights. The fact that the concept of a permanent state of emergency is contrary to the principles of international human rights law is clear both from the terms of the Covenant itself and from the relevant practice of the Human Rights Committee in interpreting those provisions. Thus, on the basis of an analysis of the guarantees prescribed by article 4 of the Covenant ^{56/} and of the corresponding provisions of the American and European

^{54/} The importance of combating violations of economic, social and cultural rights was recognized by the Commission on Human Rights in its resolution 5 (XXXIII) in the preamble of which it observed that, "in many of the cases drawn to its attention concerning allegations of violations of human rights, difficult economic and social conditions appear to prevail in the countries concerned". Accordingly, the Commission decided that, having so far concerned itself mainly with violations of civil and political rights, it "should also study violations of economic, social and cultural rights". See also Osita C. Eze "Les droits de l'homme et le sous-développement", Revue des droits de l'homme, vol. XII, No. 1-2, (1979), pp. 5-18.

^{55/} The proposition is noted and critically examined in Hurst Hannum, "The Butare Colloquium on Human Rights and Economic Development in Francophone Africa: A Summary and Analysis", Universal Human Rights, vol. 1, No. 2 (1979), p. 70.

^{56/} Article 4 of the Covenant reads as follows:

"1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, 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.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

Conventions on Human Rights (articles 23 and 15 respectively), Mrs. Questiaux, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, stated that:

"the relevant instruments establish the principle that in no instance and under no pretext, even when the security of the State from 'subversion' or 'terrorism' is at stake, do certain fundamental rights admit of derogation, even minimally.

The following minimum list is a common factor in all the instruments: right to life; prohibition of torture; prohibition of slavery; prohibition of retroactive penal measures." 57/

With respect to the two International Human Rights Covenants it is necessary to recall in the present context the nature of the limitations which may be permitted under the terms of those instruments. The only limitations to which the rights included in the International Covenant on Economic, Social and Cultural Rights may be subjected are those which: (i) are determined by law; (ii) are compatible with the nature of these rights; and (iii) are solely for the purpose of promoting the general welfare in a democratic society. 58/ Under the International Covenant on Civil and Political Rights, States parties may only take measures derogating from their obligations: (i) in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed; (ii) provided that such measures are not inconsistent with their other obligations under international law; and (iii) do not involve discrimination based solely on the ground of race, colour, sex, language, religion or social origin. 59/ It should be noted, however, that under article 4 (2) this provision does not permit any derogation from articles 6 (right to life), 7 (right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment), 8 (1) and (2) (right not to be held in slavery or servitude), 11 (right not to be imprisoned merely on the grounds of inability to fulfil a contractual obligation), 15 (right not to be convicted under a retrospective law), 16 (right to recognition everywhere as a person before the law) and 18 (right to freedom of thought, conscience and religion). In addition, the International Covenant on Civil and Political Rights permits restrictions to be placed on the exercise of certain rights in particular circumstances. 60/ Thus, for example, no restrictions may be placed on the exercise of the right of peaceful assembly "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 (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". 61/

162. In recent years a number of academic analyses has been devoted to interpretation of the implications of these provisions and it is not proposed to duplicate that work

57/ "Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency" (E/CN.4/Sub.2/490), paras. 23-24.

58/ Article 4.

59/ Article 4 (1).

60/ See articles 12, 14 (1), 18 (3), 19 (3), 21 and 22 (2).

61/ Article 21.

here. ^{62/} It is of particular importance, however, in the present context to note the "general comment" by the Human Rights Committee contained in its report to the General Assembly at its thirty-sixth session:

"(1) Article 4 of the Covenant has posed a number of problems for the Committee when considering reports from some States parties. When a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State party may derogate from a number of rights to the extent strictly required by the situation. The State party, however, may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State party is also under an obligation to inform the other States parties immediately, through the Secretary-General, of the derogations it has made including the reasons therefor and the date on which the derogations are terminated.

(2) States parties have generally indicated the mechanism provided in their legal systems for the declaration of a state of emergency and the applicable provisions of the law governing derogations. However, in the case of a few States which had apparently derogated from Covenant rights, it was unclear not only whether a state of emergency had been officially declared but also whether rights from which the Covenant allows no derogation had in fact not been derogated from and further whether the other States parties had been informed of the derogations and of the reasons for the derogations.

(3) The Committee holds the view that measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States parties, in times of public emergency, to inform the other States parties of the nature and extent of the derogations they have made and of the reasons therefor and, further, to fulfil their reporting obligations under article 40 of the Covenant by indicating the nature and extent of each right derogated from together with the relevant documentation." ^{63/}

While the foregoing comments made by the Committee are not specifically directed to the proposition that underdevelopment might constitute a justification for the declaration of a state of emergency, they are nevertheless equally applicable to that hypothesis.

^{62/} See, for example, Oscar M. Garibaldi, "General Limitations on Human Rights: The Principle of Legality", Harvard International Law Journal, vol. 17, No. 3 (1976), pp. 503-57; Rosalyn Higgins, "Derogations under Human Rights Treaties", British Year Book of International Law 1976-1977 (Oxford, Clarendon Press, 1978), pp. 281-320; Stephen Marks, "La notion de période d'exception en matière des droits de l'homme" Revue des droits de l'homme, vol. VIII, No. 4, pp. 821-58; Joan F. Hartman, "Derogation from Human Rights Treaties in Public Emergencies", Harvard International Law Journal, vol. 22, No. 1 (1981), pp. 1-52; and Robert E. Norris and Paula Desio Retton, "The Suspension of Guarantees: A Comparative Analysis of the American Convention on Human Rights and the Constitutions of the States Parties", The American University Law Review, vol. 30, No. 1 (1980), pp. 189-223.

^{63/} General Assembly Official Records: Thirty-sixth session, Supplement No. 40 (A/36/40), annex VII.

163. It is clear therefore that the conditions under which a state of emergency can justifiably be proclaimed in accordance with States' obligations under the Covenant will not readily be satisfied by the assertion that a state of underdevelopment exists. 63A/ But while the declaration of a state of emergency, defined in technical terms in the context of international law, may not be warranted by underdevelopment there is no doubt that, generally speaking, many "developing States, constantly threatened by disorder and economic difficulties, consider themselves to be permanently in an emergency situation". 64/ However, as the same commentator has stated:

"One must not wait for underdevelopment to be throttled once and for all (if ever it can be) in order subsequently to attempt to observe the rules governing human rights and freedoms." 65/

164. In view of the frequency with which national states of emergency have been declared in recent years, 66/ and in view of the number of such instances in which economic factors have been cited as justification, the Commission may wish to consider undertaking a more detailed and specific analysis of the relationship between the right to development, underdevelopment and states of emergency. In this respect it is appropriate to note that in her "study of the implications for human rights of recent developments concerning situations known as states of siege or emergency", the Special Rapporteur of the Sub-Commission has specifically excluded emergency situations relating to "force majeure (disasters of various kinds); [and] economic circumstances related to underdevelopment" 67/ on the grounds that "they are the subject of current studies, particularly in respect of the right to development". 68/ However, within the confines of the present study it is not possible to do justice to these important issues.

(ii) The relationship between the satisfaction of basic material needs and the suspension of civil and political rights

165. It is sometimes assumed that basic economic and social needs could be more rapidly and effectively satisfied if the trappings of democracy were dispensed with temporarily. Such reasoning implies a number of value judgements which on empirical grounds alone are highly questionable. Their unacceptability can be gauged from the following questions which usually remain unasked or unanswered by those who support such approaches: what economic and social needs are to be singled out for attention and what needs will be neglected?; what civil and political rights will be suspended and to what extent can any remaining rights be enjoyed in their absence?; in the

63A/ The ILO Committee on the Application of Conventions and Recommendations has stated that the exception in cases of emergency provided for in ILO Forced Labour Conventions "does not cover the exaction of labour intended to deal with a general condition of underdevelopment". By the same token the Committee has noted that "the state of development may however affect the relative gravity for a community of a particular happening, and thus determine whether in the given circumstances it creates an emergency within the meaning of the Convention". Forced Labour: General Survey on the Reports concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), Report III (Part 4), International Labour Conference, Fifty-second Session, 1968, p. 191, n. 1.

64/ Kéba M'Baye, "Les réalités du monde noir et les droits de l'homme", Revue des droits de l'homme, vol. II, No. 3 (1969), p. 389.

65/ Ibid.

66/ E/CN.4/Sub.2/490, paras. 42-53.

67/ Ibid., para. 3.

68/ Ibid., para. 4.

absence of the "trappings" of democracy who will decide what the people need and what priorities will be followed?; and since participation in decision-making will be precluded can genuine participation in implementing those decisions be achieved?; and at what stage and on whose initiative will the "temporary" suspension of civil and political rights be terminated? Moreover, the burden of proof rests on the proponents of such approaches to show that there will be a direct beneficial impact on economic and social rights which could not possibly be achieved in the absence of the proposed measures of derogation and that the benefits are in the interests of the entire population rather than in the interests of maintaining the status quo.

166. In the final analysis the acceptability of any proposed derogation must be determined in accordance with certain fundamental principles governing limitations or restrictions on human rights, 69/ in particular: (a) the principle of respect for individual dignity; (b) the principle of legality; (c) the principle of the rule of law; (d) the principle that human rights and freedoms are absolute and that limitations or restrictions are the exceptions; (e) the principle of equality and non-discrimination; (f) the principle of non-retroactivity of criminal law; (g) the principle of a fair and public hearing in judicial proceedings; (h) the principle of proportionality; and (i) the principle of prohibition of the abuse of a right or power.

(c) The positive economic consequences of respect for human rights

167. It is sometimes assumed that measures to promote respect for human rights will almost invariably represent an economic drain on the development effort. Yet in fact there is a very strong case to be made for the economic benefits to be derived from implementing a wide range of measures which contribute directly to the enjoyment of human rights. In the present section it is appropriate to recall the reference made in Chapter VII, above, to the relationship between growth and equity and to the contribution which the latter can make to the former.

168. This point is further elaborated upon by the report of the Committee for Development Planning on its fifteenth session, in 1979. In the view of the Committee:

"social expenditures should be viewed not only as a kind of 'unproductive expense' but as a sound investment in the human capital, indispensable and highly productive in economic terms. This is also the only way by which social advance can be kept sustainable over the longer run. That is why fast economic growth of developing nations should not be viewed as competing with the satisfaction of social objectives but should be understood as a way towards their satisfaction. We consider it very important that, in analyses and programmes for the various social fields developed in international forums, conformity between social objectives and over-all development progress should be reasonably observed". 70/

69/ These principles are enumerated and elaborated upon by Mrs. Erica-Irene A. Daes, Special Rapporteur, Sub-Commission on Prevention of Discrimination and Protection of Minorities in her study entitled "Study of the Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under article 29 of the Universal Declaration of Human Rights - A Contribution to the Freedom of the Individual under Law" (E/CN.4/Sub.2/432/Rev.1 and 432/Add.1-7), particularly paragraphs 1518-1535 thereof.

70/ Official Records of the Economic and Social Council, 1979, Supplement No. 7 (E/1979/37), para. 104.

Similarly the World Development Report 1980 is largely devoted to consideration of the ways in which human development can assist growth. The same theme is also analysed in the World Development Report 1981. According to the World Bank "human development ... must accompany and support the growth of production". ^{71/} The Bank also notes that human development programmes are threatened by the austerity which usually accompanies a period of adjustment such as the present, but nevertheless warns of the costs of interrupting such programmes which can, inter alia, complement adjustment efforts. ^{72/} The major thrust of these and related analyses is that concern with social and other human rights related objectives can make a strong contribution even in quantifiable terms to the achievement of economic development and over-all growth objectives. As the International Labour Conference noted in 1979, "there is an increasing realization of the contribution which the satisfaction of basic needs can make to growth through the enhanced productivity of people who are literate and in good health. It is important, therefore, that policies for the provision of such services be fully integrated with other elements of development planning to form part of the core of development strategy". ^{73/} In addition it is also necessary to take account of the intangible or unquantifiable contribution which respect for human rights can make to development. As noted above in chapter VIII, effective development requires not only the absence of repression but the fostering of an environment which unleashes, stimulates and channels the enthusiasm, energy and creativity of the masses. Although largely unquantifiable the contribution to development which is made by such an environment is enormous.

(d) The costs of repression

169. In addition to the relevant analysis contained in chapter VII of the present report with respect to the costs of militarization it is appropriate to note that there are also other costs which attach to the pursuit of repressive development policies and which thus represent a major obstacle to realization of the right to development at the national level. Most such policies, especially when institutionalized, tend to manifest a built-in escalation mechanism by which the degree of repression constantly increases until such time as all effective political opposition is stifled. But such a process is an extremely costly one which will often require the establishment of a large internal security bureaucracy which in turn facilitates the emergence of a network of informers to penetrate all parts of society in order to maintain the repression. The technological, bureaucratic and general financial costs of such a system, not to mention its social consequences, can be enormous and can significantly frustrate development efforts.

170. Moreover, once effective political opposition has been stifled the point may be reached where opposition forces consider that there remains no viable option for them other than encouraging the use of violence in its various manifestations. As stated in the preamble of the Universal Declaration of Human Rights, "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against

^{71/} World Development Report 1981 (Washington, D.C., World Bank, 1981), p. 97.

^{72/} Ibid.

^{73/} Resolution VIII, Part I, adopted by the International Labour Conference at its sixty-fifth session, Geneva, June 1979.

tyranny and oppression, that human rights should be protected by the rule of law". This link has been commented upon recently by the Inter-American Commission on Human Rights in its 1980 Report:

"When examining the situation of human rights in the various countries, the Commission has had to establish the organic relationship between the violation of the rights to physical safety on the one hand, and neglect of economic and social rights and suppression of political participation, on the other. That relationship, as has been shown, is in large measure one of cause and effect. In other words, neglect of economic and social rights, especially when political participation has been suppressed, produces the kind of social polarization that then leads to acts of terrorism by and against the government ... The general and apparently well-founded belief is that in some countries, the extreme poverty of the masses - the result in part of a less-equitable distribution of the resources of production - has been the fundamental cause of the terror that afflicted and continues to afflict those countries." 74/

171. In other instances, the costs of repressive policies in terms of the right to development may also be great, although not as readily identifiable. Thus, for example, régimes which are isolated from the masses will be forced to make decisions based on information which is not only limited but also likely to be strongly biased. In such circumstances the accuracy and validity of development plans and policies is likely to be questionable at best. 75/ Another, more specific, example that has been cited is the potential adverse impact of coups d'état on the structure, independence and capacity to contribute to development of tertiary education institutions such as universities. 76/ Similarly the brain drain of scientists, artists, writers and other talented individuals, which may be provoked or exacerbated by repressive practices, may represent a very significant cost in national development terms. Thus, article 15 of the International Covenant on Economic, Social and Cultural Rights affirms that freedom is "indispensable for scientific research and creative activity".

172. In a recent study of the impact on human rights of states of emergency a number of examples were given to illustrate "selected aspects of the relationship between states of emergency and the right to development, namely disruption of education and creation of a shortage of technicians". 77/ Many other such examples could also be mentioned in order to show that the costs of repression are substantial and must be taken into account in considering the obstacles to realization of the right to development which can, under certain circumstances, arise at the national level. 78/

74/ Organization of American States document OEA/Ser.G, CP/doc.1110/80 (1980); reproduced in United Nations document E/CN.4/1453, p. 151.

75/ See, for example, Janos Kornai, "A General Descriptive Model of Planning Process", Economics of Planning, vol. 10, No. 1-2, (1970), pp. 1-19.

76/ E. Laszlo and others, The Obstacles to the New International Economic Order (New York, Pergamon, 1980) p. 97.

77/ Daniel O'Donnell, "States of Siege or Emergency and their Effects on Human Rights: Observations and Recommendations of the International Commission of Jurists" (mimeo, Geneva, 1981), p. 9.

78/ It should also be noted, although it cannot be examined in the present report on national dimensions, that the de-stabilizing influence of a variety of international factors can provide considerable encouragement to repressive internal forces. See e.g. "Present international conditions and human rights: Report of the Secretary-General" (A/36/462).

(e) Conclusion

173. Despite the growing recognition of the economic advantages of pursuing policies which respect human rights it is important to avoid the temptation of seeking to reduce the case in favour of the right to development to the level of an economic cost-benefit analysis. While it is to be hoped that empirical analyses of different aspects of the economic implications of pro-human rights policies will be undertaken more frequently in the future, in the final analysis the most compelling justification for asserting the primacy of human rights concerns in all cases is the moral imperative of promoting respect for human dignity as articulated and codified by the international law of human rights.

5. The establishment of priorities among competing goals

(a) The question of priorities

174. As noted above, ^{79/} the principle that all human rights are indivisible and interdependent is central to the concept of the right to development. However, the question whether some human rights are nevertheless more fundamental than others is both complex and open. In the view of some commentators the notion of a hierarchization of rights is alien to, and incompatible with, the concept of indivisibility and interdependence. ^{80/} In the view of other commentators a number of factors, including the non-derogation provisions of the International Human Rights Covenants and of the major regional human rights instruments, serve to reinforce the view that there are certain fundamental rights which "are binding on States, even in the absence of any conventional obligation or of any express acceptance or comment". According to this view "such fundamental rights are considered to be valid under all circumstances, irrespective of time and place, and no derogation is allowed". ^{80A/} Regardless of which of these approaches is favoured ^{81/} the need to adopt certain objectives as priorities at a given time is inevitable in view of the fact that available resources are limited, particularly in developing countries. Thus the question of priorities is at the very heart of the political and economic processes with which the right to development is concerned. It is a distinction which, although not always easily drawn and often neglected, is of fundamental importance to any consideration of the role of human rights in the development process.

^{79/} See section 2 *supra*.

^{80/} Kéba M'Baye, "Le développement et les droits de l'homme", Revue Sénégalaise de droit, December 1977, No. 22, p. 36.

^{80A/} Theo C. van Boven, "Les critères de distinction des droits de l'homme", in K. Vasak, ed., Les dimensions internationales des droits de l'homme (Paris, UNESCO, 1978), p. 52.

^{81/} It is appropriate in the present context to note the continuing vitality of the age-old philosophical debate over whether, in any given hypothetical situation, people would opt to forego the enjoyment of one category of rights in order to increase their prospects of enjoying the other category of rights. However, the relevance of this debate to the existing international law of human rights is strictly limited since the possibility of establishing such hierarchies is unequivocally rejected by that body of law. Cf., for example, John Rawls, A Theory of Justice (Oxford, Clarendon Press, 1972) and Brian Barry, The Liberal Theory of Justice: A Critical Examination of the Principal Doctrines in "A Theory of Justice" by John Rawls (Oxford, Clarendon Press, 1973).

175. Although, in theory, the principle of indivisibility of human rights is relatively straightforward, in practice, the determination of priorities through the allocation of scarce resources among competing objectives is by its very nature a complicated and continuing process. As a Special Rapporteur of the Commission on Human Rights has concluded:

"Scarcity of means and resources necessitates making a choice and makes it essential to lay down priorities. From the point of view of social development and human rights, the priorities dictate a series of balances, such as the balance between the various levels of education, between the country and the town, between skills and jobs, between poor and rich regions, and between the present and the future." 82/

In any consideration of the question of priorities it is essential to bear in mind the oft reiterated principle that it is 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". 83/ As noted in chapter VII above, among the principles of the Charter to which States' objectives must conform is that contained in Article 1 (3) relating to the promotion and encouragement of respect for human rights. Thus, promotion of the right to development at the national level clearly requires that the determination of priorities not be the subject of external interference and be guided by human rights-related criteria.

176. In practice, however, the determination of priorities in the development process has too often been dictated not by the application of human rights criteria but rather by the selfish interests of small and powerful élites. As the former President of the World Bank has stated:

"Wealthy urban and rural families, often constituting a very small but politically influential and elite group, have frequently managed to preempt a disproportionate share of scarce public services.

"It is a very old story in human affairs, and far from being an attribute of developing countries only. But wealth and privilege have made their influence felt in these matters, and almost always at the expense of the poor." 84/

In the same speech several examples were given in order to illustrate the type of choices that may arise:

82/ Manouchehr Ganji, The Realization of Economic, Social and Cultural Rights: Problems, Policies, Progress, (United Nations publication, Sales No. E.75.XIV.2), part 6, chap. II, para. 38.

83/ Declaration on Social Progress and Development, General Assembly resolution 2542 (XXIV), article 3 (e).

84/ Robert S. McNamara, Address to the Board of Governors, (Washington, D.C., World Bank, 26 September 1977, p. 25).

"It always comes down to a question of priorities: more foreign exchange for importing private automobiles; or an expanded bus fleet. Elaborate government offices; or squatter settlement upgrading. A new generation of jet fighters for the air force; or a new generation of infants who will live beyond their fifth birthday.

"No government can do everything. To govern is to choose. But poverty will persist and grow if the choice too often favours the peripheral extravagance over the critical need." 85/

(b) Considerations relating to the setting of development priorities

177. The setting of development priorities must be undertaken on the basis of full participation in decision-making by those affected. 86/ However, in order to ensure that the establishment of priorities at the national and local levels is in accordance with the principles underlying the right to development, the following considerations must also be borne in mind.

(i) The need to acknowledge the existence of potential conflicts 87/

178. The existence of, or potential for, conflict among competing goals as well as among the means for their attainment should generally be acknowledged. The effective management of such conflict requires a careful balancing of interests in the light of prevailing circumstances with the objective of maximizing respect for human rights. For this reason attempts either to deny consistently the existence of conflict, or to apply predetermined policy approaches, are more likely to obscure than to clarify the relevant problems. However, as the perceived complexity of the issues involved in the human rights and development equation increases, so too does the temptation to retreat into dogmatic positions. At the national level the conflict between different goals may be glossed over rather than exposed and discussed, with the result that the original problems remain unresolved and are even further exacerbated by the imposition of inappropriate "solutions" chosen and implemented by small élites. At the international level the problems may be presented in an equally simplistic manner and treated as though their solution lies merely in choosing the correct ideological option and the appropriate geopolitical affiliation.

179. As the Inter-American Commission on Human Rights noted in its 1980 report:

"To date, there is no political or economic system or individual development model that has demonstrated a clearly superior capability to promote economic and social rights; but whatever the system or model may be, it must assign priority to attaining those fundamental rights that make it possible to eliminate extreme poverty." 88/

85/ Ibid., p. 27.

86/ See chap. VIII, supra.

87/ The challenge of reconciling "alleged conflicts" is examined in Allan McChesney, "'Promoting the General Welfare in a Democratic Society': Balancing Human Rights and Development", Netherlands International Law Review, Vol. XXVII, 1980/3, pp. 283-334.

88/ E/CN.4/1453, p. 143.

(ii) The need to avoid setting certain priorities to the exclusion of all others

180. The fact that particular facets of the development effort are to be accorded priority should not be interpreted as excluding the need to devote at least some attention to other problems. In other words, the legitimacy of choosing certain priorities should not imply that efforts to promote the realization of other human rights can be discarded, even temporarily. This point is well illustrated by the conclusions contained in the recent General Survey by the ILO Committee of Experts on the Application of Conventions and Recommendations on the subject of Minimum Age. The Committee notes that many "governments are simply unable to arrest child labour until their countries have achieved a level of economic development which will make it a less important factor in the survival of their citizens" but adds that "in most of these countries improvements could be made even now". ^{89/} "The fact that children are working, and are suffering because of it, is too important a problem to be set aside wholly until economic conditions can be improved to the point where it will no longer be necessary or profitable for children to work". ^{90/}

(iii) The need to maintain a degree of flexibility

181. The notion of "priority" should not be interpreted as implying a degree of rigidity. One of the keys to the establishment of priorities in the context of promoting the right to development at the national level is the maintenance of a degree of flexibility which, while enabling priority to be given to particular concerns in particular circumstances at a particular time, also makes it possible to adapt to changing conditions and perceptions.

6. The role of the United Nations in encouraging promotion of the right to development at the national level

182. In his report on "Present international conditions and human rights" the Secretary-General has noted that the human rights implications of the great issues confronting the United Nations, such as peace, disarmament, development and the establishment of a new international economic order, are often not sufficiently highlighted. ^{91/} It is appropriate therefore that consideration be given in the present context to the role which the United Nations can play in encouraging promotion of the right to development at the national level. As stated in the United Nations proposed medium-term plan for 1980-1983, "one of the most important challenges for the United Nations is the elaboration and implementation of approaches to problems and strategies for solving them, which are based on respect for human rights." ^{92/}

183. In general terms, the challenge before the United Nations is to ensure the integration of human rights concerns in development plans and strategies at the international level and to encourage a similar approach at the national level.

^{89/} International Labour Conference, Sixty-seventh Session, 1981, Report III (Part 4 B) para. 406.

^{90/} Ibid., para. 410.

^{91/} A/36/462, para. 99

^{92/} Official Records of the General Assembly, Thirty-third Session, Supplement No. 6 (A/33/6/Rev.1) vol. 1, chap. 9.

However, the quest for a "unified" or "integrated" approach to development has a long history within the United Nations and has met with mixed results at best. ^{93/} Thus, for example, in 1981 the Economic and Social Council endorsed the view that "the United Nations system must continue efforts to evolve a better conceptual framework for an integrated approach to developmental problems, and on the need for such a conceptual framework for its activities related to social development". ^{94/} From the perspective of the right to development the major problem in terms of principle is to overcome the compartmentalization of issues which in the past has tended to ensure that human rights issues are dealt with separately from development issues. If the right to development is to be effectively promoted by the United Nations a conscious effort must be made throughout the system to refute any suggestion that there is an aversion to the use of the term human rights in the context of development programmes and activities.

184. The practical dimensions of United Nations involvement in efforts to promote realization of the right to development at the national level are at least as challenging as the theoretical dimensions with which it has been primarily concerned to date. If the right to development is to avoid becoming a hollow slogan it is essential that the United Nations itself should lead the way in giving practical content to the concept. This could be achieved through a wide variety of methods and it is only possible within the confines of the present report to mention briefly several possibilities.

(a) International human rights standards as a validity criterion for United Nations development activities

185. In recent years efforts to link trade and aid policies to human rights considerations have been pursued by a variety of national and international bodies. In many cases the relevant proposals have been of a punitive or sanctionary nature and have given rise to concern that their underlying motivation does not stem primarily from human rights concerns. Thus, for example, in 1979 the Commission on Human Rights, in paragraph 5 of its resolution 5 (XXXV), expressed "its concern that qualitative and human rights conditions are being imposed in bilateral and multilateral trade policies with the intention and effect of perpetuating the existing structure of world trade". ^{95/} However, such a formulation does not exclude the possibility that, in extreme cases involving gross and consistent violations of human rights, it may be appropriate for States and the international community as a whole to seek to protect human rights through the adoption of measures relating to aid and trade.

186. There also remains the possibility of using international human rights standards in a constructive, non-punitive way to influence the priorities which might be adopted

^{93/} See The Quest for a Unified Approach to Development (Geneva, United Nations Research Institute for Social Development, 1980); "Report of the Ad Hoc Working Group on the Social Aspects of the Development Activities of the United Nations", (E/1981/3); and "Unified approach to development analysis and planning: elements of an integrated approach to social and economic planning: Report of the Secretary-General" (E/CN.5/586).

^{94/} Economic and Social Council resolution 1981/24, para. 7.

^{95/} Commission on Human Rights, Report on the Thirty-fifth session, Official Records of the Economic and Social Council, 1979, Supplement No. 6 (E/1979/36), p. 109.

by the United Nations and its agencies in the context of its development programmes and to influence the manner in which such programmes are undertaken. ^{96/} The practical implications and possible modalities for the implementation of such an approach could perhaps be further examined by the Commission on Human Rights or other appropriate organs.

(b) Human rights impact statements

187. In an earlier report the Secretary-General proposed that consideration might be given to the "practicability of requiring a 'human rights impact statement', which might be similar in concept to an environmental impact statement, to be undertaken prior to the commencement of specific development projects or in connection with the preparation of an over-all development plan or programme". ^{97/} In particular, consideration could be given to the adoption of such an approach in so far as specific under-privileged population groups, such as tribal or indigenous peoples, might be affected. ^{98/} As an example of that approach the World Bank has recently proposed the adoption of a policy whereby assistance for projects within areas used or occupied by tribal people would be provided only if the Bank was satisfied first that every effort had been made to obtain the full, voluntary agreement of those people and secondly that the project design and implementation strategy were appropriate to the tribe's special needs and wishes. ^{99/}

(c) The role of technical co-operation in promoting respect for the right to development

188. By its resolution 926 (X) of 14 December 1955 the General Assembly established the programme of "Advisory Services in the Field of Human Rights" which includes, inter alia, the possibility of providing Governments with the advisory services of experts. Until recent years, relatively few Governments had chosen to avail themselves of such services. However, in 1980 the Commission on Human Rights took a very significant step when it decided, in response to the request of the Government concerned, to request the Secretary-General to appoint, as an expert in his individual capacity, a person with a wide experience of that country with a view to assisting the Government to take the action necessary for the full restoration of human rights and fundamental freedoms. The Commission also invited all States, specialized agencies and other organs associated with the United Nations system, humanitarian organizations and non-governmental organizations to extend their help

^{96/} See, generally, Branko Horvat, "A Note on the World Economic Development from the Socialist Viewpoint", Development and Change, vol. 10 (1979), p. 676.

^{97/} E/CN.4/1334, para. 314. The same approach has been suggested more recently in John F. McCamant, "Social Science and Human Rights", International Organization, vol. 35, No. 3, (1981), p. 551.

^{98/} For a comparable suggestion see the Report of the 1981 session of the Commission on Social Development, Economic and Social Council, Official Records 1981, Supplement No. 6 (E/1981/26), para. 33.

^{99/} Report entitled Economic Development and Tribal Peoples (Washington, D.C., World Bank, 1981) quoted in Guardian Third World Review, The Guardian (London) 12 August 1981, p. 7.

and assistance to that country with a view to helping it in its desire fully to restore human rights and fundamental freedoms. ^{100/} In 1981 the Commission adopted two separate resolutions relating to two different countries in which it requested the Secretary-General to provide advisory services and other forms of appropriate assistance to help the Governments concerned to continue to guarantee the exercise of human rights and fundamental freedoms. ^{101/} Clearly such an approach provides an important practical opportunity for the United Nations to promote realization of the right to development at the national level. In order to maximize the impact of such assistance the Commission may wish to consider requesting that a study be undertaken of the principles which might guide such efforts in the future and of the most effective practical methods which might be used according to the relevant circumstances. Moreover, since the provision of technical assistance in the cases referred to above has been of an essentially curative nature the Commission may wish to consider ways in which technical co-operation can be made more effective in terms of contributing to prevention of gross violations of human rights.

(d) Promotion of the right to development by the international financial institutions

189. The subject of the precise role of the international financial institutions, notably the World Bank and the International Monetary Fund, in promoting respect for human rights has been a controversial one. ^{102/} In the present context it is not possible to do more than note the fact that the issue has also been raised in connection with the right to development, ^{103/} and might therefore be considered to warrant examination in the future.

(e) Inclusion of human rights as a factor in reports assessing development progress

190. Reports which seek to depict the development situation either in a general international setting or with respect to a particular country without any reference to the relevant human rights situation run the risk of providing a seriously unbalanced and incomplete picture. Given the importance of the interplay between

^{100/} Commission on Human Rights resolution 33 (XXXVI), Commission on Human Rights, Report on the Thirty-sixth Session of Final Records of the Economic and Social Council, 1980, Supplement No. 3 (E/1980/13), p. 195. The subsequent report of the expert is contained in document E/CN.4/1439 and Add.1.

^{101/} Commission on Human Rights resolutions 15 (XXXVII) and 30 (XXXVII), Commission on Human Rights, Report on the Thirty-seventh Session, Official Records of the Economic and Social Council, 1981, Supplement No. 5 (E/1981/25), p. 127 and pp. 231-232.

^{102/} See, for example, the questions raised in connection with General Assembly resolutions relating to South Africa and the Territories under Portuguese Administration in "Consultation with the International Bank for Reconstruction and Development: Report of the Secretary-General", (A/6825), E/CN.4/Sub.2/412, paras. 300-374; V. Marmorstein, "World Bank Power to Consider Human Rights Factors in Loan Decisions", The Journal of International Law and Economics, vol. 13, No. 1 (1978), pp. 113-136; and Special Issue on "the international monetary system and the new international order", Development Dialogue, 1980: 2, 156 pp.

^{103/} E.g. Commission on Human Rights, Report on the Thirty-seventh Session, Official Records of the Economic and Social Council, 1981, Supplement No. 5 (E/1981/25), para. 120. See also E/CN.4/Sub.2/SR.907, para. 44 and E/CN.4/Sub.2/SR.920, para. 2.

development and human rights factors which has been considered above, it is appropriate that every effort should be made to include consideration of the latter in development reports. The suggestion that the subject of human rights is "political" while development is not should also be resisted if the right to development is to be effectively promoted.

191. Reference should also be made in the present report to the recommendation adopted by the United Nations seminar on the relations that exist between human rights, peace and development, held in New York in 1981, that

"The United Nations, when dealing with development, should give the human rights aspect greater attention, particularly during the periodic assessments of the results of the Third Development Decade and when resuming the study of the report of the Ad Hoc Working Group on the Social Aspects of Development Activities of the United Nations." 104/

B. Discrimination as a major obstacle to realization of the right to development at the national level

1. Introduction

192. The principle of non-discrimination is an essential component in the concept of human rights and as such is of fundamental relevance to the right to development. It is sufficient in this respect to recall Articles 1 (3), 13 (1) and 55 of the Charter of the United Nations, article 2 of the Universal Declaration of Human Rights and article 2 of each of the International Covenants on Human Rights as well as a range of instruments which has been adopted with respect to various specific forms of discrimination. By way of example, reference may be made to article 2 (2) of the International Covenant on Economic, Social and Cultural Rights which provides 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". The importance of this provision is emphasized by the fact that while the substantive rights contained in that Covenant may be implemented only progressively, "the prohibition of discrimination should be considered as being of urgent and immediate application". 105/

193. With respect to the promotion of social progress and development the General Assembly has proclaimed 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." 106/

194. Similarly, in the context of the right to development the importance of the complementary principles of equality and non-discrimination has repeatedly been affirmed. 107/ In particular, the General Assembly has emphasized "that the right

104/ ST/HR/SER.A/10, para. 219 (8)(e).

105/ E/CN.4/988, para. 87.

106/ Declaration on Social Progress and Development, article 1, General Assembly resolution 2542 (XXIV).

107/ See for example the preambular paragraphs of General Assembly resolutions 34/46 and 35/174; also Karel de Vey Mestdagh, "The Right to Development", Netherlands International Law Review, vol. XXVIII, No. 1 (1981), pp. 51-52.

to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations". 108/ In resolution 7 (XXXVI) the Commission on Human Rights specifically requested that consideration be given in the present study to "non-discrimination of any kind in the exercise of the right to development". Moreover, the United Nations seminar on the relations that exist between human rights, peace and development concluded, inter alia, that "development is a continuous process in society which should benefit all its members without discrimination". 109/ In the present section consideration is given first to the implications of the concept of equality of opportunity and secondly to the impact of various forms of discrimination on realization of the right to development. In view of the extent to which the problems arising out of various forms of discriminatory practices have been analysed elsewhere in reports of the United Nations and other organizations, the following treatment is brief.

2. Equality of opportunity

195. In the formulation adopted by the General Assembly 110/ and the Commission on Human Rights 111/ with respect to the right to development the concept has been directly linked to the principle of equality of opportunity. However, as noted by a group of non-governmental experts in a submission to the Commission on Human Rights' Working Group of Governmental Experts on the Right to Development, "formal equality of opportunity is at best a partial step towards making development effective. It is at least as necessary to limit the extreme inequality of results and to ensure rapid progress to the attainment of certain minimum needs". 112/ In the view of those experts:

"Concern with results as well as opportunities implies that:

"Positive assistance to be given to poor and weak individuals, groups and nations consistent with and in support of their self-organization to achieve their own development;

"The organization and pursuit of self-development by wealthy and powerful individuals, groups and nations should not prevent or obstruct the efforts to develop of those who are poorer and weaker." 113/

196. The need for affirmative action in favour of deprived, disadvantaged or vulnerable groups has found expression in a range of United Nations instruments and the principle is an important component of the right to development. Thus, for example, article 1 (4) of the Convention on the Elimination of All Forms of Racial Discrimination provides that special measures may be taken for the "sole purpose of

108/ General Assembly resolution 34/46, para. 8.

109/ ST/HR/SER.A/10, para. 219 (4).

110/ Resolutions 34/46, para. 8, and 35/174, ninth preambular paragraph.

111/ Resolutions 5 (XXXV), para. 1, 6 (XXXVI) para. 2 and 36 (XXXVII) ninth preambular paragraph.

112/ E/CN.4/AC.34/WP.10, para. 11.

113/ Ibid., para. 12.

securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms". However, as stated in the same article, such measures must not entail as a consequence the maintenance of unequal or separate rights for different groups after the objectives for which they were taken have been achieved. The need for special measures in order to meet the need for a decent living environment for the most vulnerable groups of society has also been noted by the General Assembly. 114/ In addition, the Programme of Action for the Second Half of the United Nations Decade for Women: Equality, Development and Peace, states that "the attainment of equality by women long disadvantaged may demand compensatory activities to correct accumulated injustices". 115/

3. Non-discrimination as a component of the right to development

(a) Racial discrimination

197. Racial discrimination, racial segregation, racial intolerance and apartheid are all manifestations of racism. As was stated in the Declaration of the World Conference to Combat Racism and Racial Discrimination, "any doctrine of racial superiority is scientifically false, morally condemnable, socially unjust and dangerous, and has no justification whatsoever". 116/ Racially discriminatory policies thus constitute a negation of the concept of the right to development. The detrimental consequences of such policies have already been considered in a number of other United Nations reports and it is not proposed to duplicate that work here. 117/ It is of particular relevance in the present context to note briefly that economic motivations frequently lie behind racist policies. Thus the United Nations "seminar on political, economic, cultural and other factors underlying situations leading to racism including a survey of the increase or decline of racism and racial discrimination", held in Nairobi in May 1980, concluded inter alia that:

"Economic exploitation or privilege has been one of the persistent root causes of racism and racial discrimination. This phenomenon is particularly evident in the case of South Africa and its apartheid system.

Continuing inequality of economic opportunity often serves as a social and economic medium through which racism and racial discrimination are perpetuated. In order to remedy this situation, it is imperative that the chain of inequality of economic opportunity be broken." 118/

114/ Resolution 31/113. On the plight of the vulnerable and their right to protection see also the opening address by the Director of the Division of Human Rights to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-fourth session (E/CN.4/Sub.2/SR.895, paras. 4-13).

115/ A/CONF.94/35, chap. I, para. 3.

116/ A/CONF.92/40, chap. II, para. 1.

117/ See especially Racial Discrimination, study by Hernán Santa Cruz, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, (United Nations publication, Sales No. E.76.XIV.2); Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978, (A/CONF.92/40; and "General introductory paper prepared by the Secretary-General" for the aforementioned World Conference (A/CONF.92/4).

118/ ST/HR/SER.A/7, para. 154 A (3) and (4). Cf. also Economic and Social Consequences of Racial Discriminatory Practices (United Nations publication, Sales No. 63.II.K.1).

198. The link between racially discriminatory policies and practices and the right to development is clearly spelled out in article 3 of the Declaration on Race and Racial Prejudice 119/ which states that:

"Any distinction, exclusion, restriction or preference based on race, colour, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development, is incompatible with the requirements of an international order which is just and guarantees respect for human rights; the right to full development implies equal access to the means of personal and collective advancement and fulfilment in a climate of respect for the values of civilizations and cultures, both national and world-wide."

Despite the major efforts which the international community has made to eradicate racism it remains, as the Secretary-General has noted elsewhere, "prevalent in numerous areas of the world today, in a wide variety of forms and manifestations ... ranging from discriminatory governmental policies, prejudices and practices to subtle and unauthorized mistreatment on the part of the authorities, private persons or organizations". 120/ It is against this background that the Programme for the Decade for Action to Combat Racism and Racial Discrimination is being implemented 121/ and that a Second World Conference to Combat Racism and Racial Discrimination will be held in 1983. 122/ In its resolution 34/24 of 1979 the General Assembly adopted a four year programme of activities to accelerate progress in the implementation of the Programme for the Decade. It may be concluded that promotion of the right to development at the national level requires positive and unceasing efforts to eradicate racially discriminatory practices and to promote social harmony and well-being.

(b) Discrimination based on sex

199. Discriminatory policies and practices based on sex are clearly incompatible with realization of the right to development at the national level. While the effects of sex-based discrimination can be felt as much by men as by women there can be no doubt that it is women who have suffered from the vast majority of such discrimination. As one recent report has noted:

"of all the violations of human rights, the most systematic, widespread and entrenched is the denial of equality to women. Despite some progress in recent years, there is no country in the world where women have achieved full equality. Although making up half or more than half of the population, they are treated as a minority group, disadvantaged and powerless". 123/

119/ Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, Paris, 27 November 1978.

120/ A/36/462, paras. 29-30.

121/ See, for example, A/36/75; and A/36/515.

122/ See General Assembly resolutions 35/33 and 36/8.

123/ Many Voices, One World (Paris, UNESCO, 1980) p. 189. See also "Status and role of women in education and in the economic and social fields: Report of the Secretary-General" (A/34/577).

200. In 1968 the International Conference on Human Rights affirmed that "in accordance with the United Nations Charter and the Universal Declaration of Human Rights, women should be recognized as having a right to the development of their full potentialities ..." ^{124/} Since that time the United Nations ^{125/} as well as its Member States ^{126/} have adopted a wide range of measures designed to eliminate discrimination against women. In addition to the holding of two international conferences, in Mexico City in 1975 and Copenhagen in 1980, the International Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 ^{127/} and entered into force on 3 September 1981. Under Article 2 of the Convention, States Parties condemn discrimination against women in all its forms, and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 3 provides that:

"States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

201. In connection with the right to development it is of particular relevance to note that the themes of the Programme of Action for the Second Half of the United Nations Decade for Women are "Equality, Development and Peace", each of which is a fundamental element in the right to development. In the Programme of Action development is interpreted to mean total development, including development in the political, economic, social, cultural and other dimensions of human life, as also the development of economic and other material resources and also the physical, moral, intellectual and cultural growth of the human person. According to the Programme, "the improvement of the status of women requires action at the national and local levels and within the family. It also requires a change in the attitudes and roles of both men and women. Women's development should not only be viewed as an issue in social development but should be seen as an essential component in every dimension of development". ^{128/} The Programme also emphasizes that without peace and stability there can be no development. ^{129/} It defines equality as including not only legal equality but "also equality of rights, responsibilities and opportunities for the participation of women in development, both as beneficiaries and as active

^{124/} Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, op. cit., resolution IX.

^{125/} See "Recommendations relating to women and development emerging from conferences held under the auspices of the United Nations or the specialized agencies" (A/CONF.94/19); and "Review and evaluation of global and regional programmes of the United Nations system" (A/CONF.94/31).

^{126/} See "Review and evaluation of progress achieved in the implementation of the World Plan of Action: national machinery and legislation" A/CONF.94/11; and "Review and evaluation of progress made and obstacles encountered at the national level in attaining the objectives of the World Plan of Action" A/CONF.94/30.

^{127/} General Assembly resolution 34/180.

^{128/} Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, 14 to 30 July 1980 (United Nations publication, Sales No. E.80.IV.3), Chapter I.A, para. 4.

^{129/} Ibid.

agents". 130/ With reference to the Programme the International Development Strategy for the Third United Nations Development Decade states that "appropriate measures should be taken for profound social and economic changes and for the elimination of the structural imbalances which compound and perpetuate women's disadvantages". 131/

(c) Other aspects of discrimination

202. It is not possible within the limits of the present report to review all the different grounds for discrimination which may be used to deny realization of the right to development to individuals, groups, peoples and even States. It must suffice therefore to refer to the following reports or studies which have been prepared within the framework of the human rights programme of the United Nations and which deal with different aspects of discrimination, all of which are detrimental to promotion of the right to development. 132/

- (i) Study of Discrimination in Education, by Charles D. Ammoun; 133/
- (ii) Study of Discrimination in the Matter of Religious Rights and Practices; 134/
- (iii) Study of Discrimination in the Matter of Political Rights, by Hernán Santa Cruz; 135/
- (iv) Study of Discrimination in Respect of the Right of Everyone to Leave Any Country, including His Own, and to Return to His Own Country, by José Inglés; 136/
- (v) Study of Discrimination against Persons Born out of Wedlock, by Vieno Voitto Saario; 137/
- (vi) Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, by F. Capotorti; 138/
- (vii) International Provisions Protecting the Human Rights of Non-Citizens, by Baroness Elles; 139/ and
- (viii) Study of the Problem of Discrimination against Indigenous Populations, by José R. Martínez Cobo. 140/

130/ Ibid., para. 5.

131/ Ibid., para. 3.

132/ This list is not exhaustive. In addition, reference should be made to the various publications of the specialized agencies, notably ILO and UNESCO, on various aspects of discrimination.

133/ United Nations publication, Sales No. E.57.XIV.3.

134/ United Nations publication, Sales No. E.60.XIV.2.

135/ United Nations publication, Sales No. E.63.XIV.2.

136/ United Nations publication, Sales No. E.64.XIV.2.

137/ United Nations publication, Sales No. E.68.XIV.3.

138/ United Nations publication, Sales No. E.78.XIV.1.

139/ United Nations publication, Sales No. E.80.XIV.2.

140/ E/CN.4/Sub.2/476 and Add.

203. Reference should also be made to a wide range of international instruments relating to the struggle against discrimination, adopted by the United Nations, the ILO, UNESCO and other international organizations. 141/ In addition, the existence of a large number of national institutions for the protection and promotion of human rights is of major relevance in terms of combating all forms of discrimination which may hamper realization of the right to development. 142/

141/ See, for example, the instruments included in Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.78.XIV.2).

142/ A/36/440.

PART THREE

PROMOTION OF THE RIGHT TO DEVELOPMENT AT THE REGIONAL LEVEL

Chapter X The Regional Level

A. Mandate

204. This part of the study is devoted to the regional dimensions of the right to development, pursuant to Commission on Human Rights resolution 4 (XXXV), in paragraph 6 of which the Commission recommended "... to follow up the study undertaken in pursuance of paragraph 4 of Commission resolution 4 (XXXIII) 1/ with a study of the regional and national dimensions of the right to development as a human right, paying particular attention to the obstacles encountered by developing countries in their efforts to secure the enjoyment of this right ...". The subject-matter was further elaborated upon by the Commission in its resolution 7 (XXXVI), paragraph 2 of which calls for special attention to be paid to, inter alia, the "conclusion of regional agreements for optimum exploitation of wealth, and effective enjoyment of human rights in the framework of real co-operation". 2/

205. It may be recalled that the interest of the Commission on Human Rights in considering the usefulness and advisability of the establishment of regional arrangements on human rights in areas where they do not yet exist goes back to its resolution 6 (XXIII) of 22 March 1967. 3/

B. A working definition of "the region"

206. Approaching the promotion of the right to development at the regional level, it is hoped that regional arrangements might offer elements of linkage between the national and global dimensions of the right to development. In accordance with the Commission's mandate the present part of the study analyses some of the factors which are conducive to promotion of the right to development at the regional level. In particular, attention is given to the role of regional arrangements for:
(1) the promotion of economic development; (2) the structuring of peace; and
(3) the promotion and protection of human rights. Definitions of what constitutes a region vary widely. Suffice it to say in general terms that a region comprises elements of geographical, cultural, economic and social proximity, and political or military groupings or a combination thereof. 4/ The idea of regionalism is based on the recognition of "local cultural, linguistic, racial, religious and other similarities and the various diplomatic, economic and security interests which both bring States and/or peoples together and may be found in a particular geographical area". 5/

1/ E/CN.4/1334.

2/ For a full account of the mandate for the present study, see E/CN.4/1421, paragraphs 1-3.

3/ E/4322 and E/CN.4/940.

4/ Bruce Russett, International Regions and the International System (Chicago, 1967), chapters 10 and 11.

5/ Kenneth J. Twitchett, "Regional Linkages and the United Nations" in Journal of Common Market Studies, vol. XVIII, No.4 (June 1980), p.388 (review article).

207. A basic question concerns the role which Governments, international organizations and other actors should assume in promoting the formation of regional entities. It has been suggested that through economic co-operation and integration, groups of countries would be led towards economic development in the region. This could be achieved by using different models for the development of common economic policies and central decision-making institutions tailored to the needs of groups of developing countries. 6/ Conversely, in response to world political and economic developments, the region might attempt to become more self-sufficient. 7/

208. The question of regionalism is receiving more prominence in the context of structural decentralization within the United Nations, especially in the economic and social fields. A relevant aspect of decision-making in the United Nations and other global bodies is the growing reliance within those organizations upon negotiations, in the first stage within regional or subregional groups and, at a later stage, between such groups.

209. Some of the specialized agencies, notably the World Health Organization and the World Meteorological Organization, recognized the importance of regionalism in their constitutions and have made use of regional organizations and offices and regional associations in administering their programmes. 8/ Regional structures have also evolved in other global organizations like ILO, FAO and UNESCO. Though without any regional structures of its own, UNCTAD has recently been charged with the promotion of regional development through the regional economic commissions and with the financial and organizational assistance of the United Nations Development Programme (UNDP). Its programme addresses itself to all types of regional economic co-operation among developing countries at the subregional, regional and interregional levels. 9/ The trend towards regionalization within the United Nations and its agencies has been accelerated lately in response to the desire of the developing countries to exercise the fullest possible control over the formulation and implementation of development programmes and related operations.

6/ Dharam P. Ghai, Current Problems of Economic Integration: State Trading and Regional Economic Integration Among Developing Countries (TD/B/436) (United Nations publication, Sales No.E.73.II.D.17). For definitions of integration by Marxist economists, see M. Maximova, Economic Aspects of Capitalist Integration (Moscow, Progress Publishers, 1973), pp.111 et seq. See also A.B. Kuprianov, Razvivayushchiesya strany i mezhdunarodnoye sotrudnichestvo: Regionalny aspekt (Developing Countries and International Co-operation: The Regional Aspect) (Moscow, "Nauka" Publishing House, Institute of Economics, Academy of Sciences of the USSR, 1980) and Mihaly Simai and Katalin Garam, eds., Economic Integration: Concepts, Theories and Problems (Budapest, Akadémiai Kiadó, 1977). About the problem of defining a region see also paragraph 22 below.

7/ E.B. Haas and E.T. Rowe, "Regional Organizations in the United Nations: Is There Externalization?" in International Studies Quarterly, vol.XVIII (March 1973), pp.3-8.

8/ United Nations, Report on the Regional Structures of the United Nations System, by E. Ferrer Vieyra, C.S. Jha and J.A. Sawe (JIU/REP/75/2), paragraphs 151-172 and 203-206.

9/ United Nations Conference on Trade and Development, Economic Co-operation Among Developing Countries: Priority Areas for Action - Issues and Approaches (TD/244), paragraphs 51-59.

210. Another, not fully explored, aspect of regionalism is the complexity and variety of relationships between United Nations organs and outside regional and subregional organizations. This applies equally to regional economic organizations as to human rights organizations. 10/

C. Regional arrangements for economic development

1. General approach

211. As a result of the state of structural disequilibrium in world economic development, economic growth in the various regions of the world has stalled or decelerated markedly in recent years. The industrialized market economies as a whole are characterized by slow growth rates, persisting inflation and unemployment and monetary instability, intensified protectionist pressures and uncertain long-term growth prospects. Restrictive policies designed to combat inflation in industrialized countries have had adverse consequences for world development and trade, in particular on growth and employment in developing countries. 11/

212. A recent report suggests that the world economy is experiencing greater instability than at any time since the Second World War due to persisting maladjustments. Their causes and cures cannot be found through economic analysis alone; they are intimately related to changing socio-political conditions affecting the distribution of power, both nationally and internationally. 12/ The inadequacy of existing negotiating frameworks is thought to have created institutional obstacles for the realization of reforms and achievement of the new international economic order. 13/ In partial response to these problems it has been suggested that expanded economic co-operation among developing countries would be a dynamic factor in the effective restructuring of international economic relations. 14/

213. As a result of historical developments, the majority of developing countries find themselves, in their economic relations with their former colonial Powers, in a position of structural dependence which embraces all major areas of their external economic relations and thus puts constraints on their development process. 15/ Viewed from the perspective of the types of obstacles encountered by developing countries in securing the enjoyment of their right to development, there is also a lack of coherence in regions and subregions. Countries with a relatively advanced level of economic development tend to enter into relationships with developed countries or groups of countries outside the region - to the detriment of the

10/ The United Nations Institute for Training and Research (UNITAR) has covered some of these relationships in recent years. See Berhanykun Andemicael, Regionalism and the United Nations (Dobbs Ferry, New York, 1979). See also A.H. Robertson, Human Rights in the World (Manchester, University Press, 1972), especially pp.158-161 on "Regionalism and Universalism".

11/ United Nations, Economic and Social Council, Report of the ACC Task Force on Long-term Development Objectives on its eighth session (E/1981/71), paragraph 4.

12/ Ibid., paragraph 2.

13/ Ervin Laszlo and others, The Obstacles to the New International Economic Order, published in co-operation with UNITAR (New York, Pergamon Press, 1980).

14/ Ibid., paragraph 21.

15/ United Nations Conference on Trade and Development, Trade and Development Report, 1981 (United Nations publication, Sales No.E.81.II.D.9), pp.47-51.

majority of other countries in the region. 16/ The effect of lessening coherence has negative consequences for development at the domestic level and, ultimately, for the realization of the human right to development. Furthermore, externally induced models for development might result in political unrest and consequently undermine democratic institutions. Under such conditions, popular participation in the formulation and implementation of development policies tends to diminish. 17/

214. It is in this context that economic co-operation among developing countries (ECDC), based on the concept of collective self-reliance, has in recent years assumed increasing significance for endowing developing countries with a more autonomous role in their own development process. 18/ In this regard, mention should be made of several recent programmes such as the Arusha Programme for Collective Self-reliance, 19/ the Lagos Plan of Action for the Implementation of the Monrovia Strategy for the Economic Development of Africa 20/ and the Caracas Programme of Action adopted by the High-level Committee on the Review of Technical Co-operation among Developing Countries held in Caracas, Venezuela, in May 1981. 21/

215. As part of a strategy of self-reliance, it has been proposed that the surplus capital of the oil-exporting countries could be combined with the labour skills and natural resources of other developing countries to serve their larger joint markets and stimulate economic and social development. Major transformations in the internal economic situation and in the external economic relationships of each interested country would be expected to ensue: most developing countries would benefit from a relaxation of their balance-of-payments constraints and, more broadly, in the long term, from a reduction of dependence upon the developed world. Such achievements would facilitate a more productive North-South dialogue. 22/ However whether or not such an approach is adopted the full realization of the right to development would seem to require the provision of more funds through multilateral financing institutions. For the least developed countries the receipt of increased development assistance would appear to be an essential element.

2. The United Nations regional economic commissions and the strengthening of regional structures

216. The United Nations Charter recognizes not only the necessity for a more stable security system but also the need for economic and social development. The idea that regional institutions in the United Nations system should be established as organs partly designed for post-war economic reconstruction applied only to two of the five United Nations regional commissions: the Economic Commission for Europe (ECE)

16/ Ervin Laszlo and others, op.cit., pp.20 et seq.

17/ Ibid.

18/ Trade and Development Report, 1981 (United Nations publication, Sales No.E.81.II.D.9), p.48.

19/ Proceedings of the United Nations Conference on Trade and Development, Fifth Session, vol.I, Report and Annexes (United Nations publication, Sales No.E.79.II.D.14), annex VI.

20/ A/S-11/14, annex I.

21/ A/36/333, annex; and A/36/39.

22/ E/1981/71, paragraph 21.

and the Economic Commission for Asia and the Far East (ECAFE) (later on to be renamed the Economic and Social Commission for Asia and the Pacific (ESCAP)). During the founding phase of the Economic Commission for Latin America (ECLA), the Economic Commission for Africa (ECA), the United Nations Economic and Social Office in Beirut (UNESOB), later to be replaced by the Economic Commission for Western Asia (ECWA), as well as that of ESCAP, it was the intent of the countries concerned that economic development should be the major long-term goal of those institutions. 23/

217. Over the years a sizable degree of decentralization of the United Nations system in its economic and social dimensions has been reached through the four regional commissions of the developing areas of the world. As part of the restructuring of the economic and social sectors of the United Nations, which was initiated by the special session of the General Assembly devoted to development and international co-operation in 1974, the regional commissions were to be strengthened. 24/ The Group of Experts on the Structure of the United Nations System believed "that an essential component of structural changes within the United Nations system should be measures directed at strengthening the role of the regional commissions in (a) fact-finding, evaluation and analysis, (b) integrated policy making at the regional level, and (c) policy guidance and co-ordination of regional operational activities". 25/ Changes should be made in relations between the central and the regional structures to promote more operational activities in the areas concerned, in recognition of the fact that there is still a great, largely untapped, potential for the implementation by regional means of projects of regional and/or subregional scope.

218. Another impetus for the development of the regional economic commissions was provided by the adoption by the General Assembly of the United Nations of a Programme of Action on the Establishment of a New International Economic Order, which calls, *inter alia*, for expanding co-operation at the regional, subregional and interregional levels. 26/

219. In its resolution on the International Development Strategy for the Third United Nations Development Decade, 27/ the General Assembly stated that the Strategy's broad indicative targets may be supplemented by more specific regional goals set within the framework of the regional commissions. Such goals would have to take account of the conditions and requirements of the respective regions and subregions.

23/ Posley W. Newman, Jr., "Regionalism in Developing Areas: United Nations Regional Economic Commissions and their Relations with Regional Organizations", in Andemicael, ed., Regionalism and the United Nations, pp.339 et seq.

24/ A New United Nations Structure for Global Economic Development - Report of the Group of Experts on the Structure of the United Nations System (E/AC.62/9).

25/ Ibid., paragraph 163.

26/ Resolution 3202 (S-VI).

27/ Resolution 35/56, annex, paragraph 20.

220. Whereas it is up to each of the developing countries to formulate its own development priorities and targets, the regional commissions were to consider the feasibility of preparing action programmes to support the efforts of the countries of the region. Furthermore, as part of the process of appraisal as outlined in the text of the Strategy, the commissions were asked to carry out, within the framework of their regular programmes of economic surveys for the region, periodic reviews of the major aspects of development based upon the experience gained in the region. Within the United Nations system, decentralization of economic, social and related activities has long been endorsed by resolutions of the General Assembly and the Economic and Social Council. Similarly the regional economic commissions have repeatedly urged that they be given greater authority, further operational responsibilities and appropriate resources to carry out their tasks. 28/

221. One notion of regionalism holds that, historically speaking, the evolution of regional institutions may be, under certain conditions, a prime force in the structural change of world order. 29/ Another approach to regionalism has involved various attempts at generalizing about experience gained so far with existing regional integration schemes. 30/ However, not all of these approaches offer guidance for the situation and needs of developing countries.

222. As far as developing countries are concerned, forms of co-operation which go through and beyond a liberalization of trade and a setting-up of joint projects could be defined as "integration". If the degree of economic co-operation among a group of developing countries is less, it can be described as "regional co-operation". 31/ It is the latter form which has become increasingly significant for regional groupings of developing countries in order to meet their immediate as well as longer-term needs.

223. Particular emphasis has been placed in this context on the support that can be provided by the regional commissions to intergovernmental co-operation schemes, not only to those developed under the aegis of the commissions themselves, but also to other bilateral and multilateral forms of co-operation outside of the United Nations. 32/

28/ S. Ilic, C.S. Jha and A.F. Sokurkin, Joint Inspection Unit, Report on the Decentralization of United Nations Economic, Social and Related Activities and the Strengthening of the Regional Economic Commissions (JIU/REP/74/5).

29/ The proportion of regional organizations in the total number of international organizations founded was 28 per cent in the period from 1815-1914. From 1915 to 1944 it rose to 37 per cent, from 1945 to 1955 to 60 per cent and from 1956 to 1965 to 73 per cent. See J.S. Nye, Peace in Parts: Integration and Conflict in Regional Organization (Boston, Little, Brown and Company, 1971), p.4.

30/ Jacques Pelkams, "Economic Theories of Integration Revisited", Journal of Common Market Studies, vol.XVII, No.4 (June 1980), pp.333-354.

31/ Nosratollah Barati-Novbari and others, Selected Bibliography on Regional Economic Co-operation and Integration among Developing Countries: Africa-Asia-Latin America (Berlin, Dialogus Mundi, 1979), p.25.

32/ United Nations, Joint Inspection Unit, Latin American Integration: Report on the Technical Co-operation Provided by the United Nations System, prepared by Enrique Ferrer-Vieyra (JIU/REP/76/3); Asia and the Pacific: A Report on the Technical Co-operation Provided by the United Nations System to the Regional and Subregional Integration and Co-operation Movements, prepared by E.J. Ferrer-Vieyra (JIU/REP/76/9); Africa and Western Asia: Report on the Technical Co-operation Provided by the United Nations System to Regional and Subregional Integration and Co-operation Movements, prepared by E.J. Ferrer-Vieyra (JIU/REP/77/2); and Assistance by the United Nations System to Regional Inter-country Technical Co-operation Institutions, by J.C. Rodriguez-Arias (JIU/REP/80/10).

224. For example, ESCAP provides assistance to co-operative efforts in specific sectors like the Asian Rice Trade Fund. The Economic Commission for Latin America has initiated discussions with subregional and regional bodies in the area, including the Latin American Energy Organization (OLADE) and made various attempts to promote interregional co-operation. 33/ The Economic Commission for Africa has maintained a close working relationship with the OAU 34/ and has supported various subregional integration schemes in the African region. 35/ The Economic Commission for Western Asia has formalized co-operative arrangements with 16 Arab subregional organizations. Part of ECWA's work programme consists of the analysis of economic factors conducive to co-operation. 36/

225. The issue of arriving at commonly agreed identification of regions and subregions in the United Nations system has been debated in the Economic and Social Council as well as in other fora. The difficulty of defining a given region derives from the fact that the present pattern of regional structures is the result of complex political as well as technical, economic, and other developments. However it has also been pointed out that the "capacity of the regional commissions to perform policy-making and policy-review functions is diminished to the extent that their memberships do not correspond with the regional structures of other United Nations bodies". 37/

226. It is also of relevance in the present context to note that among proposals which have recently been made concerning the work of the regional commissions are: more intensive coverage in relevant reports and surveys of the specifically regional aspects of certain issues, and greater attention to the potential for regional co-operation with respect to programmes for rural and social development and work in the field of population issues. 38/

3. Promotion of the right to development at the regional level under the aegis of the specialized agencies

227. In general terms, the activities of the United Nations specialized agencies are of major importance in relation to various aspects of the development process. Comments received from the relevant agencies in connection with the study on the international dimensions of the right to development provide some indication of the way in which these activities can contribute to realization of the right to

33/ See Development and International Economic Co-operation: Implications of General Assembly resolutions 32/197 and 33/202 for the regional commissions (A/35/546), paragraphs 53-65.

34/ See Co-operation between the United Nations and the Organization of African Unity: Report of the Secretary-General (A/36/317/Add.1).

35/ See Berkanylum Andemicael, The OAU and the United Nations: Relations between the Organization of African Unity and the United Nations (UNITAR Regional Study No.2) (New York and London, Africana Publishing Company, 1976), pp.244-252.

36/ A/35/546, paragraph 58.

37/ Ibid., paragraph 43.

38/ See Restructuring of the economic and social sectors of the United Nations system: Decentralization of economic and social activities to, and the strengthening of, the regional commissions - Report of the Secretary-General (A/36/649). See also section D 2 (a) below.

development. ^{39/} In the present context it is appropriate to take note also of the important contribution made by the agencies to promotion of the right to development at the regional level. Thus, within the framework of a number of agencies machinery has been established to facilitate consultation and decision-making at the regional level. An example is the International Labour Organisation which organizes regular regional conferences of member States based on the same tripartite principle as the ILO General Conference.

228. Recent ILO regional meetings for the Asian region examined the questions of freedom of association, labour relations and development and the problems of rural workers in Asia and the Pacific. ^{40/} Basic-needs strategies have been worked out for the African as well as the Latin American regions. ^{41/} A more detailed indication of the activities undertaken by the specialized agencies, which are of particular relevance in the present context, is contained in the reports submitted by each of the agencies to the United Nations Conference on the Least Developed Countries, held in Paris in September 1981. ^{42/}

4. Regional co-operation schemes for development

229. Since developing countries differ widely in their resources, structure and organization of production, and patterns of income and wealth distribution, no single set of development policies can suit all of them. However, a number of basic policy approaches are of relevance to a wide range of countries, such as strategies to fight poverty, priority to agricultural development and the improvement of social services. ^{43/} Another type of action which has been suggested as being appropriate for collaboration among developing countries is medium-to-large-scale energy development, such as hydro-power and non-conventional sources of energy that would result in lower cost energy supplies. Arrangements

^{39/} E/CN.4/1334, annex; E/CN.4/1340; and E/CN.4/1425.

^{40/} International Labour Organisation, Asian Regional Conference, Ninth Session, Report II, Freedom of Association, Labour Relations and Development in Asia (Geneva, International Labour Office, 1980).

^{41/} International Labour Office, Fifth African Regional Conference, A Basic-Needs Strategy for Africa: Report of the Director-General, Report 1 (Part I), (Geneva, International Labour Office, 1977); International Labour Office, Eleventh Conference of American States Members of the ILO, Growth, Employment and Basic Needs in Latin America and the Caribbean: Report of the Director-General, Report 1 (Part I), (Geneva, International Labour Office, 1979).

^{42/} A/CONF.104/7 and addenda.

^{43/} Willy Brandt and others, North-South: A Program for Survival (Cambridge, Massachusetts, The MIT Press, 1980), pp.126 et seq.

could be made for the exchange of information, joint training of personnel and a consulting mechanism to establish emergency energy sharing arrangements among developing countries. 44/

230. In relation to the problem of long-run food supply, subregional and regional food security arrangements have been suggested as part of the realization of self-reliance among developing countries. More investment in food by capital-surplus developing countries could create new trade flows in food and, in the long run, help to achieve a progressive restructuring of the international grain economy. 45/ A self-reliant food supply strategy would be most important as part of the realization of the right to development.

231. A major method for accelerating development has been to promote co-operation and integration among developing countries. These schemes have been initiated in various areas of the Third World. Although not all programmes have been successful - in fact, some of them have been abandoned - such attempts have "become one of the main features of international economic relations". 46/ The search for increased self-reliance and increased independence from the industrialized world has led to stronger emphasis on mutual co-operation among developing countries.

232. At the Arusha Meeting of the Group of 77 in 1979 a decision was taken to formulate a short-term action plan for global priorities in economic co-operation among developing countries (ECDC). 47/ The Ministers of the Group of 77 reaffirmed that a strategy of collective self-reliance should be viewed as an integral part of a global economic system and "that Economic Co-operation among Developing Countries is a key element in a collective-reliant strategy". 48/ ECDC is considered as a basic component in the establishment of the New International Economic Order. At the same time, "it is a matter that chiefly concerns the developing countries, and it should be formulated and implemented by them, at the subregional, regional,

44/ E/1981/71, paragraphs 23-28; Vienna Institute for Development, "Energy Policies and Collective Self-reliance of the Third World", Occasional Paper 78/5, prepared by Surendra J. Patel.

45/ E/1981/71, paragraphs 45-52. See also Ervin Laszlo and others, The Obstacles to the New International Economic Order (New York, Pergamon Press, 1980), pp.74-76.

46/ Eduardo Lizano Fait, "Integration of Less Developed Areas and of Areas on Different Levels of Development", Economic Integration: World-wide, Regional, Sectoral, Proceedings of the 4th Congress of the International Economics Association, held in Budapest, (London, 1976), pp.275-284.

47/ Proceedings of the United Nations Conference on Trade and Development, Fifth Session, vol.I, Report and Annexes (United Nations publication, Sales No.E.79.II.D.14), annex VI, p.174, paragraph 1 (a).

48/ Ibid., p.174, paragraph 1.

interregional and global levels." 49/ Existing co-operation and integration schemes among developing countries are to provide a basis on which to build wider programmes of ECDC through such means as inter-State trading organizations, multinational production and marketing enterprises, monetary and financial institutions and the global system of trade preferences. 50/

233. An important aspect of economic co-operation among developing countries consists in schemes of technical co-operation among developing countries (TCDC). The Buenos Aires Plan of Action 51/ made a series of recommendations on how to promote TCDC. Among these, action at the subregional and regional levels should result in the strengthening of those institutions and in the improvement of regional information systems for TCDC, particularly those related to technical co-operation needs. 52/ Although the Conference did not pronounce definitely upon what is and what is not TCDC, the concept can be understood as "the sharing of developmental experience, of technical resources, skills and capabilities between developing countries for their mutual development". 53/ In a follow-up to the Conference the "High-level Committee on the Review of Technical Co-operation among Developing Countries" adopted at its second session 54/ decisions which defined some areas in which TCDC should be applied. 55/

49/ Ibid., p.174, paragraph 1 (c).

50/ UNCTAD lists 25 such integration schemes in the Third World, of which 12 are receiving assistance from the UNCTAD secretariat. See "Economic Co-operation among Developing Countries: Priority Areas for Action - Issues and Approaches" (TD/244) in Proceedings of the United Nations Conference on Trade and Development, Fifth Session, vol.III, Basic Documents (United Nations publication, Sales No.E.79.II.D.16).

51/ See Report of the United Nations Conference on Technical Co-operation among Developing Countries, Buenos Aires, 30 August-12 September 1978 (A/CONF.79/13/Rev.1) (United Nations publication, Sales No.E.78.II.A.11 and corrigendum).

52/ Ibid., paragraphs 34-65. See also Breda Pavlić, "ECDC/TCDC and Communication Development: A Missing Link", a paper presented to the International Workshop on the Promotion of Economic and Technical Co-operation among Developing Countries organized by the United Nations Conference for Trade and Development and the Research Center for Co-operation with Developing Countries (RCCDC), Ljubljana, in co-operation with FAO, UNCTC and UNIDO, at Bled, Yugoslavia, from 2 to 7 November 1981.

53/ Technical Co-operation among Developing Countries: Report by the Administrator of UNDP (DP/373), paragraph 5.

54/ Report of the High-level Committee on the Review of Technical Co-operation among Developing Countries on its second session (TCDC/2/19).

55/ Ibid., annex I.

234. More recently, at the United Nations Conference on the Least Developed Countries, in September 1981, the "Substantial New Programme of Action for the 1980s for the Least Developed Countries" was adopted and recommended for immediate implementation, including the necessary supportive measures to be undertaken within the International Development Strategy. 56/ New and additional measures by market-economy countries in favour of LDCs were announced at the Conference itself. 57/

235. At the level of regional co-operation for development, multi-country schemes among LDCs were listed as a component of the Programme of Action, especially as regards preferential treatment, joint exploitation of common river basins or other resource potentials and concessional financial and technical assistance. 58/ Arrangements for implementation, follow-up and monitoring include a review at the national, regional and global levels. As one of the mechanisms it is recommended that Governments of LDCs establish aid consultative groups or other arrangements where they do not yet exist. 59/ As further regional action, it is recommended, among other things, that the regional commissions should be suitably restructured so as to discharge their responsibilities in the follow-up to the Substantial New Programme of Action. 60/

236. Regional co-operation schemes among developing countries, joined with co-operation among the regional groups of developing countries as well as between developing and developed country groupings, can be seen as an over-all strategy in the achievement of the goals of the New International Economic Order. This approach would tend to reduce the risks inherent in a North-South confrontation. 61/

56/ Report of the United Nations Conference on the Least Developed Countries, Paris, 1-14 September 1981 (A/CONF.104/22).

57/ Ibid., paragraph 43.

58/ Ibid., paragraph 105.

59/ Ibid., paragraph 111.

60/ Ibid., paragraph 125.

61/ Ervin Laszlo, "RCDC: The Operational Modality of ECDC: Some Obstacles and Objectives", paper presented at the International Workshop on the Promotion of Economic and Technical Co-operation among Developing Countries, Bled, Yugoslavia, 2-7 November 1981.

237. At the interregional level recent examples should be mentioned in which the European Economic Community (EEC) has included measures for co-operation in development in its agreement with other regional groupings. Part of the 1980 co-operation agreement between the EEC and ASEAN is the EEC's recognition "that ASEAN is a developing region and [that EEC] will expand its co-operation with ASEAN to contribute to ASEAN's efforts in enhancing self-reliance and social well-being of its people through projects to accelerate the development of the ASEAN countries and of the region as a whole". 62/

238. Similarly, as part of the Euro-Arab Dialogue, one of the seven working committees deals with vocational training which is considered to be "of vital importance for the realization of development plans". 63/ Technical assistance is to be provided by the Arab Centre for Vocational Training in Tripoli, which was set up by the Fourth Arab Labour Conference in 1975. At the outset of negotiations between the European Economic Community and the Andean Group, it is of interest to note that questions of human rights were raised on several occasions. 64/ The Commission of the European Community believes that the best way to reinforce the protection of human rights at the subregional level would be for the Community formally to adhere to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. 65/

62/ Co-operation agreement between the European Economic Community and Indonesia, Malaysia, the Philippines, Singapore and Thailand - member countries of the Association of South-East Asian Nations, Official Journal of the European Communities, L.144, vol.23, 10 June 1980, pp.2 et seq.

63/ Euro-Arab Dialogue, Fourth General Committee, Damascus, 9-11 December 1978, section 8 on Labour and Social Affairs, mimeo.

64/ Communiqué de Presse Conjoint. Première rencontre ministérielle entre le Groupe Andin et les Communautés Européennes, 6858/80 (Presse 57), Bruxelles, le 5 mai 1980.

65/ Accession of the Communities to the European Convention on Human Rights, Commission Memorandum, Bulletin of the European Communities, Supplement 2/79. Another noteworthy development at the European level is the discussion taking place within the Council of Europe on the possibility of including economic, social and cultural rights in the European Convention on Human Rights. See F.G. Jacobs, "The Extension of the European Convention on Human Rights to include Economic, Social and Cultural Rights", Human Rights Review, III:3, Autumn 1978, pp.166-178.

5. Outlook for regional development

239. To judge by the experience of the developing countries as an aggregate group, the record of the 1970s would appear on the whole to be encouraging. The group's gross domestic product expanded at an average annual rate not far below the indicative target of 6 per cent set by the General Assembly for the Second Decade. These data conceal the wide divergences between each country's individual experience and the heterogeneity of regional development as such.

240. The broad pattern of economic development for the 1970s by regions is that East Asia, West Asia and the central belt of South America have been making major gains in respect of the level of per capita income and the pace of expansion. Although Central America has not experienced an over-all increase in per capita income, the absolute level in several countries of that region is fairly high. At the other extreme are a large number of countries in middle Africa and South Asia that have continued to face acute poverty and underdevelopment. The latter two areas, excluding China, account for the low-income countries and for the large majority of the people living in the developing countries. Among these countries are most of the least developed countries and the land-locked developing countries. In general, the same countries have low rates of literacy and life-expectancy. 66/

241. Projections for regional growth in the 1980s are not encouraging, and most of the past decade's disparities in growth rates between the different regional groupings of developing countries are expected to continue in the 1980s. 67/

242. A likely scenario for many of the developing countries comprises the following elements: "continuing inflationary pressure, in the past externally determined, will slow down public investment programmes and hamper the adoption of stimulative credit policies, thus affecting global demand; the growth in export volume is likely to remain low; a further worsening of the terms of trade is probable; and constraints on import growth will not ease since not enough external financing is likely to become available to compensate for lagging export receipts, rising import prices and mounting debt service payments." 68/

243. Through the International Development Strategy for the Third United Nations Development Decade (1981-1990) an explicit call was made for accelerating the development of the developing countries in the framework of the new international economic order. 69/ It is stated in the Strategy that the average annual rate of growth of gross domestic product for the developing countries as a whole during the Decade should be 7 per cent. If the average annual rate of population growth in developing countries remained at 2.5 per cent, this would lead to an annual increase of about 4.5 per cent in per capita gross domestic product. 70/ Special efforts are required to ensure that the low-income developing countries attain the target of 7 per cent in their gross domestic product, but no specific growth targets are indicated for regional or subregional groups of countries. 71/

66/ World Development Report 1980, (The World Bank, Washington, D.C., August 1981) pp. 10-11.

67/ Ibid.

68/ World Economic Survey 1980-1981 (E/1981/42) (United Nations publication, Sales No. E.81.II.C.2), p. 15.

69/ General Assembly resolution 35/56 of 5 December 1980.

70/ E/AC.54/L.102, p. 17.

71/ General Assembly resolution 35/56, Annex, para. 20.

244. Work carried out to assist in the task of formulating the International Development Strategy for the 1980s suggests that the average annual increase of about 7 per cent in gross domestic product of developing countries as a whole during the 1980s is consistent with the average annual increase of about 6 per cent in the low-income countries, most of which are situated in middle Africa and South Asia; about 7.5 per cent in East Asia, North Africa, and Central and South America; and about 8 per cent in West Asia. These regional or subregional target rates take into account both of the past development trends. 72/

245. Economic development in the 1980s, if achieved and combined with measures of redistribution and restructuring, should also lead to social progress. The setting of four main goals within the international development strategy was recommended as comprising: the eradication of mass hunger and the achievement of adequate health, the alleviation of mass illiteracy, an increase in life-expectancy and the achievement of full productive employment by the year 2000. 73/ Appropriate steps would also be needed at the regional level in moving towards these goals during the 1980s. 74/

D. Regionalism and the structuring of peace

1. Approaches

246. A renewed interest in regionalism cannot only be traced to the more recent arrangements for economic and social co-operation and integration. Particularly in recent years, regionalism has begun to embrace elements such as the future shape of détente, especially in the European context, as well as the creation of regional arrangements such as zones of peace for securing peace in other areas of the world. 75/ Although there seems to be a discernible trend towards the regionalization of world politics, theories of regionalism to some extent have neglected to indicate in any precise detail how regional or subregional groupings can provide elements for political, economic and social stability or how regional organizations might contribute to a more peaceful world order. 76/ The relationship between some of these endeavours and the promotion of the right to peace at the regional level has recently been underlined by the resolution adopted by OPANAL (the Agency for the Prohibition of Nuclear Weapons in Latin America established under the Treaty of Tlatelolco) on 27 April 1979. 77/

2. Disarmament and development

247. A peaceful, just and stable world order, it has been frequently stressed, depends largely on reducing the economic disparities between the developed and the developing countries. Thus a study on the relationship between disarmament and

72/ E/AC.54/L.102, p. 17.

73/ E/1980/3, para. 22.

74/ Ibid., para. 24.

75/ At least since the beginning of the nineteenth century, regionalist ideas and ideas about world order have been inseparable. See, Charles Pentland, "The Regionalization of World Politics: Concepts and Evidence", International Journal, vol. XXX, No. 4, (Autumn 1975), pp. 599-630.

76/ Joseph S. Nye, Peace in Parts: Integration and Conflict in Regional Organization, (Boston, Little, Brown and Company, 1971); Robert W. Cox, "The Crisis of World Order and the Problem of International Organization in the 1980s", International Journal, vol. XXXV, No. 2, (Spring 1980), pp. 370-395.

77/ Agency for the Prohibition of Nuclear Weapons in Latin America, resolution 128 (1979), quoted in Stephen Marks, "Emerging Human Rights: A New Generation for the 1980s?", Rutgers Law Review, vol. 33, Winter 1981, No. 2, p. 44.

development, 78/ carried out in accordance with a resolution of the General Assembly at its tenth special session, 79/ approaches the relationship between disarmament and development not only in the context of how disarmament could contribute to the establishment of the new international economic order, but also from the point of view of the feasibility of a reallocation of resources at different levels, including regional levels.

248. The Declaration of Ayacucho (Peru), signed on 9 December 1974 by eight Latin American States, may be taken as one example of a regional arms limitation initiative. In the Declaration, the signatories undertook to create conditions which would make possible the effective limitation of armaments and an end to their acquisition for oppressive purposes so that all disarmament savings would go to developmental needs within the Latin American region. 80/ The study on the relationship between disarmament and development suggests that, in addition to regional arrangements by developing countries, similar agreements might be concluded among NATO or the Warsaw Treaty Pact Organization countries for the allocation of a percentage of their disarmament savings to development. 81/

249. In its resolution 36 (XXXVII) the Commission on Human Rights recognized "that international peace and security are essential elements for the full realization of the right to development". The General Assembly has, since 1950, adopted a number of resolutions calling for measures for an over-all reduction of military spending and employing the funds released for economic and social development, especially in developing countries. 82/ The proclamation of the 1970s as both the Second Development Decade and the First Disarmament Decade were preceded and accompanied by attempts to link both proposals. 83/ The relationship between the human right to development in its international dimensions and the right to peace, as well as the role of disarmament, 84/ have been examined in preceding studies submitted to the Commission on Human Rights. This part of the present study attempts to focus on the particular regional aspects of the relationship between peace and the realization of the human right to development. This relationship has been confirmed recently in a resolution of the General Assembly which recognized "that international peace and security are essential elements in the full realization of the right to development". 85/

3. Regional disarmament and confidence-building

250. Another approach to regionalism attempts to look at the formation of regions by examining the external factors that appear to be relevant to their development. However such an approach requires that account be taken of the relevant security arrangements and their relationship to the arms build-up in various regions of the world.

78/ A/36/356.

79/ Resolution S-10/2, para. 94.

80/ A/10044, annex. The signatories are: Argentina, Bolivia, Chile, Colombia, Ecuador, Panama, Peru and Venezuela.

81/ A/36/356, para. 335 and A/35/416, para. 126.

82/ Resolutions 380 (V); 914 (X); 1837 (XVII); 2387 (XXIII); 2526 (XXIV); 2602 (XXIV); 26667 (XXV); 2685 (XXV); 3470 (XXX); 31/68 and 34/88. See also the report of the seminar on the effects of the existing unjust international economic order on the economies of the developing countries and the obstacle that this represents for the implementation of human rights and fundamental freedoms, Geneva, 30 June-11 July 1980 (ST/HR/SER.A/8), para. 45.

83/ General Assembly resolution 2685 (XXV).

84/ E/CN.4/1334, paras. 130-151 and 219-229; E/CN.4/1421, paras. 39-65.

85/ Resolution 36/133.

251. The Report of the Independent Commission on International Development Issues has strongly emphasized the relationship between disarmament and development. The armaments of the major alliances stand in a precarious kind of balance which is said by some commentators to contribute to preserving world peace. The Report states: "Our survival depends not only on military balance, but on global co-operation to ensure a sustainable biological environment, and sustainable prosperity based on equitably shared resources. Much of the insecurity in the world is connected with the divisions between rich and poor countries - grave injustice and mass starvation causing additional instability." ^{86/} In addition to the escalation of arms production and transfers by the developed countries, the build-up of arms in large parts of the Third World itself is another source of instability and undermines development. ^{87/}

252. In its recommendations, the Independent Commission called for a continuation of the process of détente through agreements on confidence-building measures and preparedness for negotiations, including those on the regional level, to get the arms race under control. The setting up of a peace-keeping machinery is proposed, which might free resources for development. ^{88/} The issue of regional disarmament is of particular importance in so far as "the various regions can improve the prospects of the global disarmament negotiations by undertaking, where appropriate, measures of a regional nature aimed at maintaining peace, political stability, regional security and economic co-operation and development." ^{89/}

253. By promoting disarmament at the regional level, various regions of the world could be prevented from intensifying intra-regional arms races as well as from increasing their involvement in the global arms race.

254. The Antarctic Treaty, which entered into force in 1961, so far represents the only international agreement for complete demilitarization of a region. ^{90/} The prevention of proliferation of nuclear weapons has, in particular, become an over-riding concern of various regions and, since the 1960s, efforts to establish nuclear weapon-free zones have increased in Africa, Latin America, the Middle East and South Asia. ^{91/} The 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) which was mentioned above is the first agreement to establish a nuclear weapon-free zone in one of the large inhabited regions of the world. ^{92/}

255. The interest of African States in the establishment of a nuclear-free zone has been evident since 1960. It was reaffirmed in the Declaration on the Denuclearization of Africa in Cairo in 1964, in which the Heads of State and Government of the Organization of African Unity also declared their readiness to undertake, through an international agreement to be concluded under United Nations auspices, not to manufacture or control atomic weapons. These intentions were endorsed by the General Assembly. ^{93/}

^{86/} Willy Brandt and others, North-South: A Program for Survival, (Cambridge, Massachusetts, The MIT Press, 1980), p. 124.

^{87/} Ibid., p. 117.

^{88/} Ibid., p. 125.

^{89/} A/35/416; United Nations publication, Sales No. E.81.IX.2, para. 149.

^{90/} United Nations, Treaty Series, vol. 402, p. 72.

^{91/} A/10027/Add.1. Comprehensive Study on the Question of Nuclear-Weapon-Free Zones in all its Aspects, United Nations publication, Sales No. E.76.I.

^{92/} See also, General Assembly resolution 35/143.

^{93/} Resolution 35/146.

256. An initiative for the establishment of a nuclear-free zone in South Asia has been introduced in resolutions of the General Assembly since 1974. The General Assembly has in principle endorsed the concept and has invited the States of the South East Asian region and other neighbouring non-nuclear-weapon States to initiate consultations in this respect and, in the interim, to refrain from any action contrary to the achievement of a nuclear-free zone. 94/ The creation of nuclear-weapon free zones in the Balkans, the Adriatic and Mediterranean sub-regions has been suggested but unlike earlier proposals for a nuclear-free zone in Central Europe, the suggestion has never been elaborated into specific plans.

257. In the field of conventional disarmament, efforts at the regional level gained support in the already mentioned Declaration of Ayacucho (Peru), signed on 9 December 1974 by eight Latin American States. 95/ In the Declaration the signatories pledged to create conditions for the effective limitation of armaments and to end the acquisition of offensive weapons so that all possible resources may be devoted to the economic and social development of every country in Latin America. In a further initiative, representatives from 20 Latin American and Caribbean countries met in Mexico City in August 1978 to propose a regional consultation mechanism relating to disarmament matters and the restriction of trade in excessively injurious conventional weapons.

258. Among regional negotiations and proposals for the European region, mention has to be made of the negotiations on Mutual Reduction of Forces and Armaments and associated measures in Central Europe, which formally opened in Vienna on 30 October 1973, the Conference on Security and Co-operation in Europe (CSCE) and its Final Act of 1 August 1975, in which questions relating to security are contained in the sections on the "Declaration on Principles Guiding Relations between Participating States" and in the "Document on confidence-building measures and certain aspects of security and disarmament." 96/ A proposal for the peaceful settlement of disputes has also been made in the context of CSCE. 97/ At the second follow-up meeting of CSCE at Madrid, two proposals were put forward on the holding of a European conference on disarmament. One of them relates to the broadening of already existing measures of confidence-building in Europe. 98/ The concept of confidence-building measures was also taken up by the General Assembly at its tenth special session devoted to disarmament, in 1978. 99/

259. By resolution 34/87 B of 11 December 1979 the General Assembly requested the Secretary-General to carry out a study on confidence-building measures with the assistance of a group of qualified governmental experts and to submit it to the Assembly at its thirty-sixth session. 100/ The study re-states the findings of the

94/ Resolution 35/148.

95/ A/10044, annex.

96/ Conference on Security and Co-operation in Europe, Final Act, Helsinki, 1975, pp. 77-87.

97/ Report of the Meeting of Experts representing the participating States of the Conference on Security and Co-operation in Europe, provided for by the Final Act of the CSCE in order to pursue the examination and elaboration of a generally acceptable method for peaceful settlement of disputes aimed at complementing existing methods, Montreux, 1978.

98/ A/35/416; para. 42 outlines the numerous proposals for the enlargement of security and confidence-building measures in Europe.

99/ See A/36/474.

100/ Ibid., para. 1.

study on all aspects of regional disarmament (A/35/416), i.e. that "for the great majority of States, the perceived threats to their security and the need for military preparedness is primarily connected with conditions of their own region". 101/ Problems of security and the perceptions thereof would therefore make a regional approach to confidence-building both desirable and feasible. 102/ Since the bulk of the proposals put forward by Governments was mainly related to military concerns, these received a broader and more detailed examination.

260. The Group emphasized that confidence is a result of many factors which are both of a military and a non-military nature. In a regional context, confidence has to be based on a combination of measures which may vary from region to region. Governments made suggestions for policies and measures for the most part related to political, economic and social matters, such as:

(a) "Respecting the sovereignty, independence and territorial integrity of all States and non-intervention and non-interference in their internal affairs, having regard to the inherent right of States to individual and collective self-defence, in accordance with article 51 of the United Nations Charter;

(b) Terminating policies of aggression and colonialism;

(c) Respecting human rights and fundamental freedoms in accordance with existing international instruments;

(d) Making use of the United Nations and other appropriate fora for the continuing consideration and promotion of confidence-building measures;

(e) Establishing a new international economic order, including international co-operation and integration for economic and social development;

(f) Respecting the sovereignty of States over their natural resources;

(g) Undertaking joint economic development projects, especially in border areas;

(h) Elaborating bilateral or regional agreements on projects for co-operation and integration;

(i) Using qualified personnel and resources in joint co-operation projects in the field of development and of a humanitarian nature; help in case of natural disasters." 103/

261. In a regional context, proceeding from the view that there are special conditions for each region, the study concludes that, strictly military and security considerations would not suffice to determine the best suited confidence-building measures. In most cases such measures might be promoted by taking into account factors such as the existence of cultural, economic, ideological and political links. 104/ States within a region should decide freely within the exercise of their sovereignty whether a confidence-building process is to be launched. The initiative for this may also emanate from a regional organization. 105/

101/ Ibid., para. 99.

102/ Ibid., para. 101.

103/ Ibid., paras. 135-136.

104/ Ibid., para. 103 and A/35/416, para. 155.

105/ A/36/474, para. 105.

E. Regional machinery for the promotion and protection of human rights and its relationship to the right to development

1. Introduction

262. In addition to the various regional arrangements for the promotion of economic development and the structuring of peace which have been considered above, there exist a number of important regional arrangements for the promotion and protection of human rights. While there is considerable variation from region to region in the extent to which such arrangements have been established and developed, there have been significant initiatives in several different regions and subregions of the world. It is clear that both the existing arrangements and those which are presently under consideration are of major relevance to any efforts which may be made to promote realization of the right to development at the regional level. In the present section consideration is first given to the initiatives which have been taken within the United Nations system to stimulate regional human rights arrangements. Existing regional machinery, and in particular that established in their respective regions by the Organization of American States (OAS), the Council of Europe; the Organization of African Unity (OAU), and the Arab League are then noted, in addition to some more recent subregional human rights initiatives. Finally, consideration is given to the extent to which promotion of the right to development has been, or may in the future, be undertaken by regional and subregional human rights institutions.

2. United Nations initiatives 106/

263. During the first two decades of their existence, human rights programmes of the United Nations were primarily focused on the global level. Outside the context of the United Nations there were two regional arrangements made before 1945. The Inter-American Commission for Women, established as early as 1928, was recognized in 1968 as an Inter-American Specialized Organization.

264. The need for the protection of Indians was considered in the 1930s by the Inter-American Conference of American States. In 1940 a Convention was adopted at Mexico City for the founding of an Inter-American Indian Institute which has become a specialized agency of the Organization of American States (OAS).

265. In the mid-sixties United Nations organs began to take an increasing interest in regional human rights arrangements. By that time regional non-United Nations instruments had already been adopted in Europe and on the American continent, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, concluded at Rome on 4 November 1950 and the American Declaration on the Rights and Duties of Man, adopted at Bogotá in 1948 by the Inter-American Conference at its ninth session; and preparatory work had begun on the American Convention on Human Rights. Both the European and American Conventions provided for a Commission and a Court. In December 1965, the United Nations General Assembly took the initiative to invite regional inter-governmental organizations with competence in the field to provide full information on their activities to the International Conference on Human Rights which was convened in 1968 on the occasion of the twentieth anniversary of the Universal Declaration of Human Rights. 107/ Subsequently, four regional organizations, the Council of Europe, the Organization of American States (OAS), the Organization of African Unity (OAU), and the League of Arab States were invited to the International Conference on Human Rights held at Teheran. The Economic and Social Council, in August 1966, invited the same four regional organizations to attend the sessions of the Commission on Human Rights and to send regularly to the Commission information about their respective human rights activities. 108/

106/ For a detailed account, see Regional Promotion and Protection of Human Rights, Twenty-Eighth Report of the Commission to Study the Organization of Peace, (New York, May 1980).

107/ Resolution 2081 (XX) of 20 December 1965.

108/ Economic and Social Council resolution 1159 (XLI) of 5 August 1966.

266. The first proposal in a United Nations context that Member States should consider the establishment of regional human rights commissions in areas where no such arrangements exist was made at the twenty-third session of the Commission on Human Rights in March 1967. 109/ By its resolution 6 (XXIII) the Commission on Human Rights decided to set up an ad hoc Study Group of eleven of its members "to study in all aspects the proposal to establish regional commissions on human rights within the United Nations family" and pay attention to the following matters:

- (a) the basis on which regional commissions on human rights might be established in those areas where such bodies do not exist;
- (b) the terms of reference of such Commissions and method of appointment of their members;
- (c) the relationship between the Commission on Human Rights, on the one hand, and the existing regional commissions and those that may subsequently be established, on the other. 110/

267. The Ad Hoc Study Group discussed the question of regional human rights commissions under three aspects: the advantages to be derived from the setting-up of regional commissions; the possible terms of reference; and their relationship with other international organs dealing with human rights. 111/ The study group did not, however, delineate the regions in which human rights commissions might be established. The basic questions, however, were left open, questions which had also been a problem in the context of regional co-operation schemes in the security, economic and social fields; namely, which countries might constitute a particular region or subregion and what kind of regional institution would be most suitable in each case.

268. Among the members of the Ad Hoc Group there was general agreement "that regional human rights commissions could only be established on direct and exclusive initiative of States comprising a given region, and that there could be no question of any such body being initiated from outside the region or the United Nations imposing its establishment on the States concerned". 112/ The Ad Hoc Group did not make any specific recommendations.

269. The report of the Ad Hoc Group was considered by the Commission on Human Rights at its twenty-fourth session in 1968. Some members were of the opinion that additional human rights instruments at the regional level could supplement the global approach of the United Nations. Others stated that such action would be unnecessary or premature and not in line with the universality of human rights. 113/ The Commission adopted resolution 7 (XXIV) requesting the Secretary-General to transmit the Study Group's report to Member States and regional inter-governmental organizations for comments and to consider the possibility of arranging suitable regional seminars under the programme of advisory services for the purpose of discussing the advisability of the establishment of regional human rights commissions.

109/ Report of the Commission on Human Rights on its twenty-third session, Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 6 (E/4322), paras. 284-290.

110/ Ibid., resolution 6 (XXIII), paras. 1 and 2.

111/ Report of the Ad Hoc Study Group established under resolution 6 (XXIII) of the Commission on Human Rights (E/CN.4/966 and Add.1).

112/ Ibid., paras. 41-44.

113/ Report of the Commission on Human Rights on its twenty-third session, Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 4 (E/4475), paras. 225-243.

270. Another initiative was taken at the International Conference on Human Rights in Teheran in 1968 which took place in observance of the International Year for Human Rights. 114/ Under the heading of "Future Programme", a comprehensive set of recommendations for promoting and protecting human rights was adopted, including two proposals for regional arrangements. 115/ The Conference was however unable to consider the majority of the proposals because of lack of time. It requested the Secretary-General "to transmit those texts to the competent organs of the United Nations for further consideration". 116/

271. Another step towards the establishment of regional human rights commissions was taken at a seminar organized under the United Nations programme of advisory services in the field of human rights at the invitation of the United Arab Republic in Cairo in 1969. The seminar considered the question of the establishment of regional human rights commissions under three broad aspects: usefulness, advisability, and main functions; considerations applying to its establishment; and its relationship with the United Nations, the specialized agencies and other regional organizations. Participants were of the opinion that regional machinery for the promotion and protection of human rights was an important supplement to national and world-wide efforts in the same field. They stressed that an intermediary stage, to be carried out on a regional basis by organizations created for that purpose, would add to the very active national and universal programmes for the effective realization of human rights in the world today. Activities to bring about the fuller enjoyment of human rights and fundamental freedoms by an ever increasing percentage of the world's population needed to be co-ordinated not only within countries and in the world at large but among groups of countries which shared, to a large extent, the same heritage and faced very similar problems.

272. It was pointed out that belonging to a regional organization in no way detracted either from national enforcement or from proper participation in United Nations efforts, in matters relating to human rights. The regional organization would simply take steps within its sphere of competence to implement provisions of its own instruments and programmes. Very often it was possible to accomplish much more on a regional basis than on a world basis, partly because in the smaller community there was more confidence among members. 117/ The seminar unanimously favoured the establishment of a human rights commission for Africa. The theme of the establishment of regional human rights commissions was subsequently taken up by other seminars. 118/

114/ Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968 (A/CONF.32/41).

115/ Ibid., p. 49.

116/ Ibid., p. 19.

117/ Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa (ST/TAO/HR/38), paras. 20-21.

118/ Sec, Report of the Conference of African Jurists on the African Legal Process and the Individual (E/CN.4/52) This conference was organized jointly by the Organization of African Unity and the United Nations Commission for Africa in April 1971; Seminar on the study of new ways and means for promoting human rights with special attention to the problems and needs of Africa, Dar-es-Salaam, United Republic of Tanzania, 23 October-5 November 1973, (ST/TAO/HR/43); Seminar on the establishment of regional commissions on human rights with special reference to Africa, Monrovia, Liberia, 10-21 September 1979, (ST/HR/SER.4/4).

3. Existing regional human rights arrangements: an overview

273. Regional arrangements for promoting human rights exist basically in four regions or subregions: Africa, the Arab world, Latin America and Western Europe. Existing regional human rights arrangements thus provide for elements of a regional human rights structure in different areas of the world, with the exception of the Asian continent.

(a) Organization of American States

274. The Charter of the Organization of American States (OAS) was signed at the Ninth International Conference of American States in Bogotá in May 1948. It contains a number of provisions relating to fundamental human rights as well as to social and cultural standards. The revised Charter of 1967 provides for the establishment of several interrelated organs including an Inter-American Commission on Human Rights which, since 1960, has become an autonomous entity of the OAS. The inter-American system for the protection of human rights adopted, in 1969, the American Convention on Human Rights, which entered into force in July 1978 upon ratification by eleven member States of the OAS. 119/ The American Convention itself guarantees civil and political rights. In accordance with the Convention, the Statutes of both the Commission and the Court had to be submitted to the OAS General Assembly, which met at La Paz, Bolivia, and approved both Statutes.

(b) Council of Europe

275. The earliest regional arrangement for the protection of human rights was established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed in Rome on 4 November 1950 and entered into force in 1953. It was concluded within the framework of the Council of Europe. The Convention, later supplemented by a number of Additional Protocols, guarantees basic civil and political rights. It established two institutions: the European Commission on Human Rights and the European Court of Human Rights. The Committee of Ministers of the Council of Europe exercises special supervisory and enforcement functions. 120/

(c) Organization of African Unity (OAU)

276. The Organization of African Unity was established in 1963 to foster co-operation on political, economic, social, cultural and technical matters. The promotion and protection of human rights was not specifically included among its functions. As a regional political organization the OAU, like other regional arrangements of an economic or political character, contained relatively few references to human rights. Human rights efforts of the organization were, until 1979, mainly focused on the rights of peoples to self-determination. 121/

119/ Héctor Gros Espiell, "L'Organisation des Etats Américains (OEA)", Les Dimensions Internationales des droits de l'homme (Karel Vasak, Rédacteur général), (Paris, UNESCO, 1978), pp. 600-633.

120/ Regional Promotion and Protection of Human Rights, (Twenty-eighth Report of the Commission to Study the Organization of Peace, (New York, May 1980), appendix II, pp. 47-48.

121/ Birame Ndiaye, "La place des droits de l'homme dans la Charte de l'Organisation de l'Unité Africaine", Les dimensions internationales des droits de l'homme, (Paris, UNESCO, 1978), pp. 664-679.

277. Attention has however been paid recently to the establishment of human rights machinery in Africa. The existing pattern of co-operation between the OAU and the United Nations, as well as the fact that acute development problems exist in a number of African States, 122/ might have moved the organization towards the adoption of the "African Charter on Human and Peoples' Rights" in the beginning of 1981, which pays particular attention to the right to development. 123/

(d) League of Arab States

278. The League of Arab States was initiated by the Protocol of Alexandria of 25 September 1944, which was finally accepted on 22 March 1945 by its seven founding members. The purpose of the League was to co-ordinate the political activities of its Member States and to safeguard and defend the interests of all Arab countries. 124/

279. Co-operation between the United Nations and the Arab League had already been intensified when the Secretary-General of the Arab League sought the views of the United Nations on the proposal to create a regional human rights commission. In response, the League endorsed the proposal on the condition that such a commission be established within the framework of the permanent bodies of the Arab League. The League itself should determine the terms of its co-operation with the United Nations Commission on Human Rights. 125/ After the establishment of the Permanent Arab Commission on Human Rights which first met in 1969, the League completed a Draft Declaration for an Arab Charter on Human Rights, in 1971.

4. Other regional and subregional human rights initiatives

280. A number of regional and subregional activities in the field of human rights have been undertaken in recent years. They are outlined here as examples, although in comparison to the above-described regional arrangements, they lack institutional machinery or may still be in the process of formulation.

(a) Helsinki Final Act

281. The Final Act of the Conference on Security and Co-operation in Europe (CSCE) was signed on 1 August 1975 at the highest level of representation by all European States (with the exception of Albania) and by the United States of America and Canada. Already during its preparatory stages, the Conference agenda began to include, in addition to various aspects of security in Europe, 126/ the fields of economic co-operation and humanitarian and other areas. 127/ In so far as the Act also

122/ Berhanykun Andemichael, The OAU and the UN: Relations between the Organization of African Unity and the United Nations, (UNITAR Regional Study, No. 2), (New York and London, African Publishing Company, 1976).

123/ See section 5 below.

124/ B. Boutros-Ghali, "La Ligue des Etats arabes", Les dimensions internationales des droits de l'homme, (Paris, UNESCO, 1978), p. 636 ff.

125/ S.P. Marks, "La Commission Permanente Arabe des Droits de l'Homme", Revue des Droits de l'Homme/Human Rights Journal, vol. III, pp. 101-108.

126/ See also section D (3) above.

127/ Michael Palmer, The Prospects for a European Security Conference, European Series No. 18, (London Chatham House: PEP, June 1971) pp. 11-17.

embraces human rights matters, it may be considered a regional European arrangement. 128/ Human rights aspects are, for example, covered in the "Declaration on Principles Guiding Relations between Participating States" and its principles VII, "Respect for Human Rights and Fundamental Freedoms, including the Freedom of Thought, Conscience, Religion or Belief" and VIII, "Equal Rights and Self-determination of peoples". 129/ The seventh principle states in one of its paragraphs:

"In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound." 130/

In its Third Basket, entitled "Co-operation in Humanitarian and Other Fields" 131/ the Final Act spells out in detail the areas in which the participating States are morally obliged to co-operate. These encompass: human contacts, including contacts and regular meetings on the basis of family ties, reunification of families, marriage between citizens of different States, travel for personal and professional reasons, improvement of conditions for tourism on an individual and collective basis, meetings of young people, sport; the whole field of information; and co-operation and exchanges in the field of culture.

282. In accordance with the follow-up procedures set forth in the Final Act, 132/ a follow-up meeting was held in Belgrade in 1977-1978 and a second meeting in Madrid was convened in November of 1980.

(b) Riobamba Charter

283. Another recent example of regional co-operation with an implicit reference to the right to development is the "Riobamba Charter of Conduct" which was adopted by the Foreign Ministers at the Andean Group in May 1980. It was signed in Riobamba on 11 September 1980 by Colombia, Ecuador, Peru and Venezuela; Costa Rica, Panama and Spain acceded to the spirit and principles of the Charter of Conduct. 133/

284. The Charter consists of eleven articles and states as one of its objectives in the first paragraph: "to achieve a subregional political order originating from democracy that is essentially popular and of a participating character". It goes on to stress, in its second article, the promotion of "new integral development schemes based on the principle of social justice ...". For the internal conduct of affairs among the States of the Andean Group respect for human, economic and social rights is considered to be a basic rule. The relationship between disarmament and development is expressly referred to when the Charter declares that subregional and regional

128/ B.G. Ramcharan, "The Role of Regional, National and Local Institutions: Future Perspectives", Human Rights Thirty Years after the Universal Declaration (B.G. Ramcharan, ed.) (The Hague, Martinus Nijhoff, 1979), p. 235; Victor-Yves Ghebali "L'Acte final de la Conférence sur la sécurité et la co-opération en Europe et les Nations Unies", Annuaire Français de Droit International, XXI, 1975, pp. 73-127.

129/ Final Act, pp. 80-81.

130/ Final Act, pp. 113-131.

131/ Final Act, section "Follow-up to the Conference", pp. 133-134.

132/ Final Act, p. 81.

disarmament based on the Declaration of Ayacucho constitutes an effective contribution to general and complete disarmament and makes it possible to free resources for economic and social development. 134/

285. Interpretative measures like the settlement of disputes among themselves, common policies in the economic, social, labour, educational, cultural, technological and health fields are advocated. As principles of conduct for strengthening the group's negotiation position towards third parties, joint action in international negotiations and the principle of collective economic security are called for.

286. Among the international instruments that the Andean Group pledges to apply are, in the following order: the Charter of the United Nations; the Charter of the Organization of American States; the Universal Declaration of Human Rights; the Charter of Economic Rights and Duties of States; the Declaration on the Establishment of a New International Economic Order; the Cartagena Mandate of 28 May 1979; the Quito Declaration of 11 August 1979; the Panama Act of 1 October 1979; and the Lima Declaration of 29 July 1980.

(c) The Asian region

287. Another proposal to set up a regional human rights arrangement was encouraged by the General Assembly in its resolution entitled "Regional, national and local arrangements for the promotion and protection of human rights", in which the Assembly recalled its resolution 34/171 in which it "reiterated its appeal to States in areas where regional arrangements in the field of human rights do not yet exist to consider arrangements with a view to the establishment within their respective regions of suitable regional arrangements for the promotion and protection of human rights" and requested the Secretary-General to make the necessary arrangements, following finalization of the consultations with Member States of the Asian region, with a view to holding a seminar at Colombo in 1981. 135/ On this subject the Law Association of Asia and the Western Pacific recommended, in a resolution dated 30 August 1979, that a centre or centres for human rights in the region should be established and steps towards the ultimate establishment of an Asian Commission and/or Court for Human Rights be initiated. 136/

(d) South Pacific region

288. For the South Pacific region, the Chief Commissioner of the Human Rights Commission of New Zealand has suggested the establishment of a Human Rights Commission. 137/ A similar idea was to encourage the South Pacific Forum to pay some attention to human rights matters. 138/

5. Promotion of the right to development within the context of regional human rights arrangements

289. In a review of structures and functions of already existing regional human rights instruments with reference to the Council of Europe, the OAS and the League

134/ Ibid., para. 5.

135/ Resolution 35/197.

136/ LAWASIA (The Law Association of Asia and the Western Pacific), Colombo. Resolution, 30 August 1979, (mimeographed).

137/ Commonwealth Law Bulletin, vol. 6, No. 4 (October 1980) p. 1363.

138/ Regional Promotion and Protection of Human Rights, Twenty-eighth Report of the Commission to Study the Organization of Peace (New York, 1980), annex III, pp. 72-73.

of Arab States, three main roles were distinguished for regional human rights institutions: standard-setting, promotion and protection. 139/ While each of these roles has been developed to a greater or lesser extent by different regional organizations, activities directed towards promotion of the right to development have not been specifically considered at the regional level, with the exception, noted below, of the provisions contained in the African Charter of Human and Peoples' Rights.

290. In a report submitted to the General Assembly at its thirtieth session, the Secretary-General noted the interest of a number of countries which were in favour of establishing regional commissions. 140/ Others favoured a proposal for a body of advisers of balanced geographical distribution to assist a High Commissioner. In a supplementary report, the Secretary-General noted in 1977 141/ that some delegations from Western Europe and Latin America further supported the idea of regional commissions. Alternatively, the establishment of regional United Nations commissions on human rights was proposed. In a separate section on the idea of a High Commissioner on Human Rights, the Secretary-General noted the differing views on such an institution as well as on the suggestion of a Board of five High Commissioners to use their good offices in each one of the regions. Interest in this respect was also voiced at the thirty-second session of the General Assembly in 1977. The Assembly deferred action on a proposal for a High Commissioner and requested the Commission on Human Rights to "undertake an over-all analysis of the whole subject". 142/

291. At the same time the earlier initiative, in 1968, by the Commission on Human Rights to establish regional human rights commissions was recalled. The General Assembly appealed to States in areas where regional arrangements in the field of human rights did not exist to consider agreements with a view to the establishment of "suitable regional machinery for the promotion and protection of human rights". 143/ The Secretary-General was also requested to give priority to organizing seminars to discuss the advisability of establishing regional commissions.

292. The issue of regional arrangements was subsequently taken up by the Commission on Human Rights at its thirty-fourth session in February-March 1978 144/ and by the General Assembly at its thirty-third session. 145/ In response to these initiatives the Secretary-General reported to the General Assembly at its thirty-fourth session in 1979 that he had "followed closely the efforts of governmental as well as non-governmental organizations to establish regional human rights arrangements in various regions or sub-regions of the world, including those in Africa, Asia, the Arab region and the Caribbean region". 146/ Other meetings outside the

139/ See the report of the Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa (ST/HR/SER.A/4), paras. 17-36.

140/ Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms: Report of the Secretary-General (A/10235).

141/ A/32/178.

142/ Resolution 32/130.

143/ Resolution 32/127.

144/ Commission on Human Rights resolution 24 (XXXIV).

145/ Resolution 33/167.

146/ A/34/359.

United Nations context were held which reflected a renewed interest in regional human rights arrangements, also in view of the relationship between human rights and the human right to economic development. 147/

293. In a further resolution entitled "Regional, national and local arrangements for the promotion and protection of human rights", the General Assembly recalled its resolution 34/171 "in which it reiterated its appeal to States in areas where regional arrangements in the field of human rights do not yet exist to consider arrangements with a view to the establishment within their respective regions of suitable regional arrangements for the promotion and protection of human rights" and requested the Secretary-General to make the necessary arrangements, following finalization of the consultations with Member States of the Asian region, with a view to holding a seminar at Colombo. 148/ The seminar is to be held in 1982.

294. The setting up of a regional human rights arrangement for Africa has been under discussion since 1967. Earlier approaches to the establishment of an African human rights machinery are in part reflected in the African Charter on Human and Peoples' Rights 149/ which was adopted by the OAU in 1981. 150/ In its seventh preambular paragraph, the African States members of the OAU include the first reference in the Charter to the right to development in the following manner:

"Convinced that it is henceforth essential to pay particular attention to the right of development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality, and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights....".

The right to self-determination as it applies to peoples' right to development is anchored in article 20, paragraph 1: "... They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen." Article 22, paragraph 2, states further that: "States shall have the duty, individually or collectively, to ensure the exercise of the right to development." The establishment of an "African Commission on Human and Peoples' Rights" is envisaged within the OAU. The Commission will consist of eleven members from among African personalities of the highest reputation. 151/ The Secretary-General of the OAU will appoint the Secretary of the Commission and provide services and bear their costs. 152/

147/ See, for example, Hurst Hannum, "The Duta e Colloquium on Human Rights and Economic Development in Francophone Africa: A Summary and Analysis", Universal Human Rights, vol. 1, No. 2 (April-June 1979) pp. 63-87; International Commission of Jurists, Human Rights in a One-Party State, (London, 1977); Human Rights and Development: Report of a Seminar on Human Rights and their Promotion in the Caribbean, (Bridgetown, Barbados, 1978).

148/ Resolution 35/197.

149/ Organization of African Unity, Proceedings of the Council of Ministers, Thirty-seventh ordinary session held at Nairobi, Kenya, 15-21 June 1981, African Charter on Human and Peoples' Rights (CH/1149(XXXVII)) (Addis Ababa, OAU Secretariat, 1981).

150/ Ibid., annex I.

151/ African Charter on Human and Peoples' Rights, article 31.

152/ Ibid., article 41.

295. The Commission's mandate shall consist of the promotion of human and peoples' rights, in particular through information-gathering, the formulation of principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation, and co-operation with other African and international institutions concerned with human and peoples' rights. The Commission will interpret all provisions of the Charter at the request of a State Party and perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government. 153/

296. The Commission may resort to any appropriate method of investigation; it may draw to the attention of the State concerned any violations of the Charter by written communication and ask for a written explanation. 154/ After having tried all appropriate means to reach a suitable solution, the Commission is entitled to prepare a report stating the facts and findings. It may make recommendations to the Assembly of Heads of State and Governments on the matter. 155/ The Commission will not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the OAU, or among the parties themselves. 156/ Emergency cases are handled by a special procedure. 157/ The principles from which the Commission still draws inspiration are stated in the following order: the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the OAU, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and African countries as well as from the instruments adopted within specialized agencies of the United Nations of which the parties of the African Charter are members. 158/

297. The Charter will come into effect three months after the receipt by the Secretary-General of the instruments of ratification or adherence of a simple majority of OAU States. 159/

F. Conclusions

298. The various arrangements considered above for the promotion of economic development, for the structuring of peace and for the promotion and protection of human rights offer some elements of a regional structure which can be considered to be important in over-all efforts to promote realization of the right to development. Existing arrangements of a more or less institutionalized type may in the future be supplemented by further regional co-operation schemes, which would be conducive to self-reliant development as well as to the promotion of respect for human rights in general and of the right to development in particular.

299. As indicated by the foregoing survey, such regional schemes might take a variety of forms ranging, for example, from subregional statements of intent in particular areas of policy to more formal regional arrangements for the promotion and protection of human rights.

153/ Ibid., article 45.

154/ Ibid., articles 46 and 47.

155/ Ibid., articles 52 and 53.

156/ Ibid., article 56, para. 7.

157/ Ibid., article 58, para. 3.

158/ Ibid., article 60.

159/ Ibid., article 63, para. 3.

300. Regional aspects have always been considered as being crucial to the setting up of a peace structure in the sense that they reduce dependencies and mistrust and facilitate co-operation and understanding on a broad range of issues. For the same reasons regional arrangements for the promotion and protection of human rights, particularly in areas where they do not yet exist, should receive more attention since they are conducive to the realization of the right to development. The explicit recognition, in regional instruments, of the human right to development offers itself as an additional possibility that could be explored.

301. There is a need to avoid the consideration of regional initiatives in various fields in isolation from each other. The United Nations context offers itself as a framework in which various regional initiatives, relating as much to development as to human rights, can be explored in a coherent and, wherever possible, integrated fashion.

302. One specific suggestion which has been made, 160/ and which the Commission on Human Rights may wish to consider as a measure designed to foster a greater regional awareness of human rights, including the right to development, would involve stationing a specifically designated Human Rights Officer at the headquarters of each of the United Nations regional economic commissions. Such an innovation would: contribute to the better understanding of human rights standards; facilitate both the collection and dissemination of information; and help to combat any tendency towards compartmentalization involving the possible neglect of human rights considerations. In this regard it is relevant to note that the International Labour Office has recently introduced a system of regional advisers on international labour standards.

303. Arrangements and organizations which link both economic co-operation and the promotion of human rights are so far very few in number. In the future it is to be hoped that other, perhaps more innovative, forms of regional co-operation in human rights matters, specially tailored to the promotion of the human right to development, will be further explored.

160/ Theodoor van Boven, "Menschenrechte: Möglichkeiten und Grenzen der Vereinten Nationen", Vereinte Nationen No. 3/1979, p. 98.

Chapter XI. CONCLUDING OBSERVATIONS

304. The present study has, in accordance with the mandate given to the Secretary-General by the Commission on Human Rights, focused primarily on the regional and national dimensions of the right to development as a human right. Consideration has also been given in Part One of the study (E/CN.4/1421) to the impact of some international factors on realization of the right to development at the regional and national levels. In all respects the present study should be seen as complementary to the earlier report of the Secretary-General on the international dimensions of the right to development (E/CN.4/1334). These studies, taken together, serve to underline the unitary nature of the right to development and the fact that the local, national, regional and international dimensions of the right are all closely inter-linked. Thus, on the one hand, it has been said that "the success or failure of development processes very much depends on internal socio-political conditions, and if these work against over-all development, not even the best international setting would be good enough to overcome such obstacles". ^{161/} On the other hand, it is equally true that an international political and economic environment which obstructs rather than assists the efforts of the developing countries may present an insurmountable barrier to full realization of the right to development at the national level despite the most determined internal efforts to achieve self-sustained growth and over-all social and cultural development in a climate of respect for human rights.

305. In the earlier report, on the international dimensions of the right to development, emphasis was given to the central importance of achieving disarmament and the cessation of the arms race as a prerequisite not only for realization of the right to peace but also of the right to development. ^{162/} The significance of both the right to peace and disarmament have been further considered in Part One of the present study. ^{163/} Also in the report on the international dimensions, note was taken of the close relationship between the establishment of a new international economic order and realization of the right to development. ^{164/} In Part One of the present study consideration was given to specific aspects of this relationship including issues

^{161/} Dieter Senghaas, "Self-reliance and Autocentric Development: Historical Experiences and Contemporary Challenges", Bulletin of Peace Proposals, vol. 12, No. 1 (1981), p. 51.

^{162/} E/CN.4/1334, paras. 130-151 and 219-229.

^{163/} E/CN.4/1421, paras. 39-65.

^{164/} E/CN.4/1334, paras. 152-159. In para. 4 of its resolution 36/133 of 14 December 1981, the General Assembly reiterated "that the establishment of the new international economic order is an essential element for the effective promotion and the full enjoyment of human rights and fundamental freedoms for all".

relating to: international migration; international trade; the activities of transnational corporations; and international development aid. 165/ In general terms, it was noted that, "with a view to promoting realization of the right to development, the international community, as well as individual States, have a duty to remove the obstacles, including external obstacles, to self-determination in its fullest sense... [They] have also the duty to assist in establishing conditions which are conducive to positive realization of the right to development." 166/

306. Other international obstacles hindering realization of the right to development have been dealt with in a report of the Secretary-General on "Present international conditions and human rights" 167/ These include, inter alia: patterns of inequality including racism, racial discrimination and apartheid; patterns of alien subjugation, domination and exploitation perpetuating ties of dependency dating from the past; threats or uses of force to establish new ties of dependency or to extend existing ones; the existence of the unjust system of international economic relations; and the arms race.

307. Part Two of the present study begins by noting the extent to which the right to development, in both its material and non-material aspects, is presently being denied to hundreds of millions of persons, a very large proportion of whom are in developing countries. In response to these massive violations of human rights, increasing attention has been given in recent years not only to the symptoms but also to the structures which give rise to and help maintain the existing inequitable distribution of political and economic power. Consideration has then been given in the study to a small number of selected national level issues which appear to be of particular importance. In particular, the problem of militarization, which is one of the most significant obstacles to realization of both the right to development and the right to peace, has been examined. Inevitably, many issues which would otherwise have warranted analysis have had to be excluded for want of space.

308. Methods and policies for promoting realization of the right to development at the national level have been considered and, in accordance with the mandate of the Commission on Human Rights, particular emphasis has been attached to the concept of participation.

309. In Chapter IX the relationship between human rights and development issues has been analysed in some detail. In addition to considering the relationship between the two sets of human rights note has been taken of some of the arguments which are all too often invoked for according priority to development over respect for human rights. In this regard it has been noted that any development strategy which directly involves the denial of fundamental human rights, in whatever name or cause it may be undertaken, must be deemed to be a systematic violation of the right to development. The problem of discrimination as a major obstacle to realization of the right to development at the national level has also been considered. In Part Three of the study various aspects of the promotion of the right to development at the regional level have been analysed.

165/ E/CN.4/1421, paras. 66-159.

166/ Ibid., para. 31.

167/ A/36/462.

310. In the course of the study several recommendations, to which the Commission on Human Rights may wish to give consideration, have been made. They relate to, inter alia: developing the concept of accountability in terms of international law; considering the impact of endogenous cultural values on realization of the right to development (para. 54); undertaking a study on all aspects of the impact of militarization on respect for human rights, including the right to development (para. 91); considering measures to restrict the transfer of arms or other forms of technology which are used in the systematic violation of human rights (para. 92); considering the feasibility of establishing a system of registration of particular types of international arms transfers (para. 95); further elaboration of concepts and methodologies relevant to the promotion of economic, social and cultural rights (paras. 135-137); studying in detail the relationship between the right to development, underdevelopment and states of emergency (para. 164); considering specific practical measures which the United Nations itself can adopt in order to give further concrete meaning to the right to development (para. 184); studying ways to develop the use of international human rights standards in United Nations development activities (para. 186); developing the concept of requiring the preparation of human rights impact statements in particular circumstances (para. 187); considering ways in which technical co-operation can be made more effective in terms of contributing to prevention of gross violations of human rights (para. 188); examining the role played by the international financial institutions in promoting or inhibiting respect for human rights (para. 189); and considering the stationing of Human Rights Officers at the headquarters of each of the United Nations regional economic commissions (para. 302).

311. It may be concluded, on the basis of the analysis undertaken in this and related studies, that the principles embodied in the right to development should be consistently taken into account in the design, adoption and implementation of development activities and in the evaluation of their impact. Just as the human person should be seen as the subject and object of development, so too must respect for human rights including the right to development be seen both as a means and as an end in itself. Thus the right to development serves to emphasize that, "in the final reckoning, the test of all our efforts is what we do for human freedom and human dignity, what we do to banish fear and want, what we do to provide better economic security and what we do to attain greater equality of opportunity". 168/